

FEBRUARY 01, 2024

THOMAS KATO

<p>UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>-oOo-</p> <p>KITCHEN WINNERS NY INC., ) Plaintiff, ) v. ) Case No. : ROCK FINTEK LLC, ) 1:22-cv-05276-PAE Defendant._____) ROCK FINTEK LLC, ) Counterclaimant and ) Third-Party Plaintiff, ) v. ) KITCHEN WINNERS NY INC., ) Counter-Defendant, ) and ) ADORAMA INC., HERSHEY WEINER, ) JOSEPH MENDLOWITZ, JNS ) CAPITAL HOLDINGS LLC and ) JOEL STERN, ) Third-Party Defendants._____)</p> <p>DEPOSITION OF NON-RETAINED EXPERT WITNESS ON BEHALF OF ROCK FINTEK LLC THOMAS KATO FEBRUARY 1, 2024</p> <p>STENOGRAPHICALLY REPORTED REMOTELY BY: MONIQUE K. GENTRY, RPR, CSR No. 12354</p> <p>Job No. 1994</p>	<p>Page 3</p> <p>A P P E A R A N C E S: (All appearances remotely via videoconference):</p> <p>ATTORNEY FOR ROCK FINTEK LLC: PHILLIP RAKHUNOV, ESQ. Pollack Solomon Duffy LLP 43 West 43rd Street, Suite 174 New York, New York 10036 (617)960-3118 prakhunov@psdfirm.com</p> <p>ATTORNEY FOR KITCHEN WINNERS NY, ADORAMA, INC., AND JOSEPH MENDLOWITZ: ALEXANDER J. SPERBER, ESQ. Lipsius-Benham Law, LLP 80-02 Kew Gardens Road, Suite 1030 Kew Gardens, New York 11415 (212)981-8449 asperber@lipsiuslaw.com</p> <p>ATTORNEY FOR JNS CAPITAL HOLDINGS LLC AND JOEL STERN: AVRAM E. FRISCH, ESQ. Avram E. Frisch LLC 1372 Milford Terrace Teaneck, New Jersey 07666 (201)289-5352 frischa@avifrischlaw.com</p> <p>Also Present: Jamie Jordan, Notary Hershey Weiner Brad Gilling</p>
<p>Page 2</p> <p>UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>-oOo-</p> <p>KITCHEN WINNERS NY INC., ) Plaintiff, ) v. ) Case No. : ROCK FINTEK LLC, ) 1:22-cv-05276-PAE Defendant._____) ROCK FINTEK LLC, ) Counterclaimant and ) Third-Party Plaintiff, ) v. ) KITCHEN WINNERS NY INC., ) Counter-Defendant, ) and ) ADORAMA INC., HERSHEY WEINER, ) JOSEPH MENDLOWITZ, JNS ) CAPITAL HOLDINGS LLC and ) JOEL STERN, ) Third-Party Defendants._____)</p> <p>Zoom videoconference deposition of THOMAS KATO, Non-Retained Expert Witness on behalf of Rock Fintek LLC, commencing at 1:28 p.m., Eastern, Thursday, February 1, 2024, before Monique Kathleen Gentry, Registered Professional Reporter, California Certified Shorthand Reporter No. 12354 and Notary.</p>	<p>Page 4</p> <p>I N D E X</p> <p>WITNESS: THOMAS KATO</p> <p>EXAMINATION PAGE</p> <p>BY ATTORNEY SPERBER 5</p> <p>BY ATTORNEY FRISCH 52</p> <p>E X H I B I T S</p> <p>NUMBER DESCRIPTION PAGE</p> <p>Kato Expert 1 Rock Fintek Expert Disclosure 9</p> <p>Kato Expert 2 Michael Elstro deposition transcript taken November 13, 2023 21</p>

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<p style="text-align: right;">Page 5</p> <p>1 THURSDAY, FEBRUARY 1, 2024; 1:28 P.M., EASTERN 2 REMOTE PROCEEDINGS 3 THE NOTARY: Mr. Kato, if you could raise your right hand 4 for me. 5 Do you solemnly swear or affirm to tell the truth, the 6 whole truth and nothing but the truth so help you God? 7 THE WITNESS: Yes, I do. 8 THE NOTARY: Thank you. 9 * * * * * 10 THOMAS KATO, 11 having been first duly sworn, testified as follows: 12 EXAMINATION 13 BY ATTORNEY SPERBER: 14 <b>Q Good afternoon. My name is Alexander Sperber. We</b> 15 <b>met at your prior deposition, but I am one of the attorneys</b> 16 <b>for Kitchen Winners, Adorama, and Joseph Mendlowitz. I know</b> 17 <b>you testified under oath at your prior deposition, but let me</b> 18 <b>just review the rules just so that everyone is on the same</b> 19 <b>page.</b> 20 <b>Do you understand that you are under the same oath today</b> 21 <b>that you would be in a courtroom?</b> 22 A Yes, I do. 23 <b>Q And do you understand that even though you're</b> 24 <b>testifying at a deposition today that the testimony you give</b> 25 <b>under oath here is subject to the same penalty of perjury as</b></p>	<p style="text-align: right;">Page 7</p> <p>1 A Like, e-mails -- e-mails with Ascension. 2 <b>Q Anything else?</b> 3 A No. Just, you know, the bank statements of what 4 came in, what went out, what -- you know, what we made, what 5 we didn't. 6 ATTORNEY RAKHUNOV: And, Counsel, just before -- I'm 7 sorry to interrupt. I just want to put on the record at the 8 beginning that Mr. Kato is appearing at today's deposition not 9 as a fact witness, which that deposition concluded the last go 10 round, but he's appearing as a non-retained expert witness to 11 testify regarding the value of Rock Fintek's lost business 12 with Ascension. I know we all know that, but I want the 13 record to reflect that clearly. 14 ATTORNEY SPERBER: That's fine. 15 BY ATTORNEY SPERBER: 16 <b>Q And I guess my first real substantive question here</b> 17 <b>is going to be: Mr. Kato, am I correct that the scope of your</b> 18 <b>expert testimony concerns the value of Rock Fintek's lost</b> 19 <b>business with Ascension?</b> 20 A Yeah, and everything that it sort of touches, and 21 it's my opinion like Phillip said not factual. 22 <b>Q I'm sorry?</b> 23 A It will be my opinion also. 24 <b>Q Right. But you said everything that sort of touches</b> 25 <b>on that. Could you be more specific?</b></p>
<p style="text-align: right;">Page 6</p> <p>1 <b>though you were testifying in a court of law?</b> 2 A Yes, I do. 3 <b>Q If you don't understand one of my questions, please</b> 4 <b>let me know. Unless you tell me otherwise, I'm going to</b> 5 <b>assume you understood the question. Okay?</b> 6 A Sounds good. Understood. 7 <b>Q Is there anything that would prevent you from</b> 8 <b>thinking clearly or testifying truthfully today?</b> 9 A No, there is not. 10 <b>Q Okay. If you need time to take a break during the</b> 11 <b>deposition, just let me know. As long as there is no question</b> 12 <b>pending, we are happy to take a break at your convenience.</b> 13 A Sounds good. 14 <b>Q In preparing for today's deposition, did you review</b> 15 <b>any documents?</b> 16 A Yes, I did. 17 <b>Q Which documents did you review?</b> 18 A I went over the past depositions and some of the 19 company papers, financials, what I had previously said in my 20 other deposition. I went through what Bradley said. I went 21 through a little bit of what your clients said in their 22 depositions. I went through some e-mails with Ascension 23 Health I reviewed. 24 <b>Q You said you went over some company papers. Which</b> 25 <b>company papers were those?</b></p>	<p style="text-align: right;">Page 8</p> <p>1 A Ascension Health has a sister company in Australia 2 called St. Johns{sic} Healthcare System. It's about a 3 120-year-old system, and they referred us to them, and we sold 4 them some masks. We got into an order of 4 million of them. 5 We did a deal with the government, Western Australia Health, 6 with St. Paul's Health so that sort of was affected by this. 7 What else could be affected? Just some -- that's pretty 8 much it. I would say that, one, the referrals and things like 9 that are affected. Like, they gave us Delta Airlines. They 10 wanted to work with us. Now, they don't. And then some stuff 11 with Prisma Health that we were working with that our 12 salespeople are now selling to them directly not through us, 13 so somewhat related, but not. 14 <b>Q Okay. You said "Prism Health" -- "Prism Health"?</b> 15 <b>Excuse me?</b> 16 A Prism Health Systems -- Prisma. Prisma? 17 <b>Q You mentioned "Delta"?</b> 18 A Delta Airlines. Ascension referred them to us. 19 <b>Q Okay. Did Rock Fintek produce in this lawsuit any</b> 20 <b>documents concerning its business with Delta Airlines?</b> 21 A I don't believe so. 22 <b>Q Did Rock Fintek produce in this lawsuit any</b> 23 <b>documentation concerning its business with Prism Health{sic}?</b> 24 A I don't believe so. 25 <b>Q How about with the entity you discussed in</b></p>

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<p style="text-align: right;">Page 9</p> <p>1 <b>Australia?</b></p> <p>2 A I don't -- I don't believe we did, and I don't think</p> <p>3 anybody asked me about it during my deposition, about the lost</p> <p>4 business or other relationships.</p> <p>5 ATTORNEY SPERBER: Okay. I'm going to show you a</p> <p>6 document. We will mark this -- let me see. Off the record</p> <p>7 for just a minute until I figure out how to share a document</p> <p>8 with you.</p> <p>9 BY ATTORNEY SPERBER:</p> <p>10 <b>Q Mr. Kato, can you see a document in front of you</b></p> <p>11 <b>titled Rock Fintek LLC's Expert Witness Disclosure?</b></p> <p>12 A Yes, I do.</p> <p>13 ATTORNEY SPERBER: Okay. And just for the record, I've</p> <p>14 marked this exhibit as Exhibit Kato Expert 1.</p> <p>15 (Exhibit Kato Expert 1 was marked for</p> <p>16 identification.)</p> <p>17 BY ATTORNEY SPERBER:</p> <p>18 <b>Q Are you familiar with this document?</b></p> <p>19 A Hold on. I've got to zoom it a little bit more.</p> <p>20 Yes.</p> <p>21 <b>Q Does this document reflect -- at least in the</b></p> <p>22 <b>section titled Non-retained Expert, does that reflect the</b></p> <p>23 <b>testimony or the scope of testimony that you will be</b></p> <p>24 <b>presenting as an expert in this matter?</b></p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 11</p> <p>1 were contracting to do with them going forward.</p> <p>2 <b>Q When you say the amount of revenue you had done, can</b></p> <p>3 <b>you be more specific?</b></p> <p>4 A Yeah. I think it's down here in -- further down.</p> <p>5 We did \$32 million in sales previously with them, and then</p> <p>6 another \$37 million, so \$70 million. And on top of that, we</p> <p>7 were making a COVID test to give them, and we were talking</p> <p>8 about other products along with bidding on a glove contract</p> <p>9 that would be three years.</p> <p>10 <b>Q So I think you're referring to a line here where it</b></p> <p>11 <b>says that, "Mr. Kato expects to further base his opinion on</b></p> <p>12 <b>the fact that between March 2020 and February 2021, Rock</b></p> <p>13 <b>Fintek sold to Ascension Health various personal protection</b></p> <p>14 <b>equipment including gloves, gowns and masks in the amount of</b></p> <p>15 <b>approximately \$32 million as unrelated to any of the Medicare</b></p> <p>16 <b>glove transactions at issue in this lawsuit."</b></p> <p>17 <b>Is that what you are referring to?</b></p> <p>18 A Correct.</p> <p>19 <b>Q Okay. Now, just to begin with, the \$32 million that</b></p> <p>20 <b>you refer to there, is that revenue or profits?</b></p> <p>21 A Revenue.</p> <p>22 <b>Q So I assume Rock Fintek had expenses as well,</b></p> <p>23 <b>correct?</b></p> <p>24 A Minimal expenses.</p> <p>25 <b>Q Okay. So you're saying that you had \$32 million in</b></p>
<p style="text-align: right;">Page 10</p> <p>1 ATTORNEY RAKHUNOV: And, Counsel, I apologize for</p> <p>2 interrupting, but just since you raised it, I do just want to</p> <p>3 put on the record that there have been documents produced in</p> <p>4 this case concerning the Australian affiliate of Ascension</p> <p>5 Health, and I would just refer to Bates No. RF003489. It's</p> <p>6 one example that I could pull up quickly just so there's no</p> <p>7 confusion.</p> <p>8 ATTORNEY SPERBER: Okay.</p> <p>9 BY ATTORNEY SPERBER:</p> <p>10 <b>Q If you look at the paragraph that begins, "Mr. Kato</b></p> <p>11 <b>is expected to testify," do you see where I'm referring to?</b></p> <p>12 A Yes, I do.</p> <p>13 <b>Q So the second sentence there, "Mr. Kato expects to</b></p> <p>14 <b>testify that Rock Fintek would have earned but has lost at</b></p> <p>15 <b>least approximately \$36 million per year in profits for at</b></p> <p>16 <b>least three years that it had been earning from its</b></p> <p>17 <b>relationship with Ascension and had reasonably expected to</b></p> <p>18 <b>continue earning for the foreseeable future."</b></p> <p>19 <b>Is that a correct statement of your expert opinion in</b></p> <p>20 <b>this matter?</b></p> <p>21 A Yes.</p> <p>22 <b>Q Can you explain to me how you reached the number of</b></p> <p>23 <b>\$36 million in profits per year for three years?</b></p> <p>24 A Based on what I had previously done with them, the</p> <p>25 amount of revenue we did and the amount of business that we</p>	<p style="text-align: right;">Page 12</p> <p>1 <b>profits as well?</b></p> <p>2 A No. No.</p> <p>3 <b>Q So what -- over that time period, what were Rock</b></p> <p>4 <b>Fintek's profits?</b></p> <p>5 A I looked at the financials. I don't recall exactly</p> <p>6 what those profits were.</p> <p>7 <b>Q Okay.</b></p> <p>8 A I would have to look at them again.</p> <p>9 <b>Q Now, that \$32 million, does that include</b></p> <p>10 <b>approximately \$9.25 million given by Ascension Health as a</b></p> <p>11 <b>down payment in connection with the purchase order at issue in</b></p> <p>12 <b>this lawsuit?</b></p> <p>13 A No. I don't believe so.</p> <p>14 <b>Q It does not. Okay. Well, it says over here that</b></p> <p>15 <b>between March 2020 and February 2021 -- that's the timeframe</b></p> <p>16 <b>you're referring to, right?</b></p> <p>17 A Let me see what you're talking -- March 20th to</p> <p>18 February Mr. Kato --</p> <p>19 ATTORNEY RAKHUNOV: It goes over from page 2 to page 3 of</p> <p>20 the document.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 ATTORNEY RAKHUNOV: It's hard to --</p> <p>23 THE WITNESS: Yeah. I see it.</p> <p>24 BY ATTORNEY SPERBER:</p> <p>25 <b>Q Now, did you reach this \$32 million number by adding</b></p>

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<p style="text-align: right;">Page 13</p> <p>1 <b>up all the payments from Ascension Health?</b></p> <p>2 A I believe when we went -- when I went through the</p> <p>3 numbers and added them up, I added everything up and excluded</p> <p>4 the amount of funds that Ascension Health paid me for their</p> <p>5 gloves. It may or may not have included that part of it.</p> <p>6 <b>Q So is it your testimony that if I were to go back</b></p> <p>7 <b>through Rock Fintek's bank statements, it did not include the</b></p> <p>8 <b>\$9.25 million down payment provided by Ascension Health on</b></p> <p>9 <b>December 8th, I would still reach \$32 million in revenue that</b></p> <p>10 <b>Rock Fintek received from Ascension Health in that timeframe?</b></p> <p>11 <b>Is that your testimony?</b></p> <p>12 A You may or may not. If it's in the bank statements,</p> <p>13 then it happened. If it's not, then it did not.</p> <p>14 <b>Q Well, I want to understand. You --</b></p> <p>15 A I believe maybe it's included, but I'm not for</p> <p>16 certain, and I don't want to say I'm for certain on it.</p> <p>17 <b>Q Well, you are here testifying as an expert</b></p> <p>18 <b>concerning Rock Fintek's lost profits, correct?</b></p> <p>19 A That's four years ago you're talking about.</p> <p>20 Numbers, I looked at, but four years ago of lost profits.</p> <p>21 <b>Q Okay.</b></p> <p>22 A The total amount -- total revenue is -- you have it</p> <p>23 at \$32 million plus the \$37 million, so --</p> <p>24 <b>Q So you're saying \$37 million is on top of this;</b></p> <p>25 <b>meaning that the \$9.25 million is not included in the</b></p>	<p style="text-align: right;">Page 15</p> <p>1 <b>Health?</b></p> <p>2 A We sold several other products, Intco -- Medgluv,</p> <p>3 Intco, Lyfemed. There might have been two other ones. I have</p> <p>4 to remember the names of the companies.</p> <p>5 <b>Q So, again, I'm trying to understand your opinion</b></p> <p>6 <b>that Rock Fintek would have made \$36 million per year in</b></p> <p>7 <b>profits for at least three years.</b></p> <p>8 <b>Now, you say that in -- between March 2020 and</b></p> <p>9 <b>February 2021, Rock Fintek had revenue of \$32 million, and</b></p> <p>10 <b>you're not sure of the exact amount of the profits that Rock</b></p> <p>11 <b>Fintek had, so how are you projecting from that revenue to</b></p> <p>12 <b>profits in subsequent years?</b></p> <p>13 A How did I project that revenue into profit? Based</p> <p>14 on the relationship and the communication we had with</p> <p>15 Ascension and based on their deposition and their testimony</p> <p>16 saying very likely they would still be working with us as of</p> <p>17 today even, then I believe we would be doing the same amount</p> <p>18 of sales if not more. And the profit from just the testing</p> <p>19 kits alone was -- we were making them around \$1.50, \$1.20, and</p> <p>20 they were going to be retailed around \$5 or \$6. We also were</p> <p>21 selling them other masks, other gowns, other products.</p> <p>22 <b>Q So, let me -- let's go -- okay. Let's focus on that</b></p> <p>23 <b>aspect of things. So am I correct that Ascension testified</b></p> <p>24 <b>they were not interested in purchasing additional gloves from</b></p> <p>25 <b>Rock Fintek even before they realized there were issues with</b></p>
<p style="text-align: right;">Page 14</p> <p>1 <b>\$32 million? Is that your testimony?</b></p> <p>2 A It might be included.</p> <p>3 THE WITNESS: Phillip, is it included or not?</p> <p>4 ATTORNEY RAKHUNOV: Well, I would -- I'm not here to</p> <p>5 testify, but I would just say I'm not sure why folks aren't</p> <p>6 just looking at the document that's on the screen because --</p> <p>7 ATTORNEY SPERBER: Look. I'm here to ask Mr. Kato. He</p> <p>8 is testifying as an expert in Rock Fintek's lost business. I</p> <p>9 want to understand the nature of his opinion here.</p> <p>10 THE WITNESS: Okay. I will just read the document.</p> <p>11 "Mr. Kato expects to further base his opinion on the fact that</p> <p>12 between March '20 and February '21, Rock Fintek sold to</p> <p>13 Ascension various personal protection equipment and clothes,</p> <p>14 gowns, masks, in the amount of \$32 million that is unrelated</p> <p>15 to any Medicare glove transactions at issues in the lawsuit."</p> <p>16 So, yes. It was included.</p> <p>17 BY ATTORNEY SPERBER:</p> <p>18 <b>Q What's included?</b></p> <p>19 A The \$9 million deposit.</p> <p>20 <b>Q It says that this \$32 dollars includes gloves that</b></p> <p>21 <b>were not part of the Medicare glove transaction, right? It</b></p> <p>22 <b>says unrelated to any of the Medicare glove transaction at</b></p> <p>23 <b>issue in this lawsuit.</b></p> <p>24 A Correct.</p> <p>25 <b>Q What other gloves did Rock Fintek sell to Ascension</b></p>	<p style="text-align: right;">Page 16</p> <p>1 <b>the gloves that had already been provided?</b></p> <p>2 ATTORNEY RAKHUNOV: Objection. Form. It</p> <p>3 mischaracterizes testimony.</p> <p>4 BY ATTORNEY SPERBER:</p> <p>5 <b>Q You can answer.</b></p> <p>6 A I'm still on the payment side of your question</p> <p>7 before you rolled -- I didn't answer that question about the</p> <p>8 payments and how I was going to come up with the profit.</p> <p>9 <b>Q Well, okay. Was there a formula you used to reach</b></p> <p>10 <b>that number of \$36 million per year in profits?</b></p> <p>11 A Yeah. I came up with the total revenue I brought</p> <p>12 into them was around approximately \$62 million. Payments to</p> <p>13 my suppliers were approximately \$19.4 million. Payments for</p> <p>14 my logistics was approximately \$6 million, and my profit was</p> <p>15 approximately \$36 million.</p> <p>16 <b>Q Let's -- I want to break this up.</b></p> <p>17 A Okay.</p> <p>18 <b>Q So you previously testified that Rock Fintek lost</b></p> <p>19 <b>money on the \$37 million purchase order for gloves at issue in</b></p> <p>20 <b>this lawsuit.</b></p> <p>21 A Correct.</p> <p>22 <b>Q So any profits that Rock Fintek made were prior to</b></p> <p>23 <b>that, correct?</b></p> <p>24 A Correct.</p> <p>25 <b>Q So what -- if Rock Fintek had continued doing</b></p>

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<p style="text-align: right;">Page 17</p> <p>1 <b>business with Ascension, after the 200 million purchase order</b></p> <p>2 <b>had been fulfilled --</b></p> <p>3 A Yeah.</p> <p>4 <b>Q -- what specific products would it have been selling</b></p> <p>5 <b>to Ascension?</b></p> <p>6 A We would have been selling -- hopefully, in my</p> <p>7 opinion, testing kits. We would have been selling them more</p> <p>8 gloves. We would have been selling them more masks, gowns.</p> <p>9 They talked about butterfly straps. They talked about other</p> <p>10 products that they also needed, IV bags, the lines for the IV</p> <p>11 bags; you know, the -- just whatever came up that they were</p> <p>12 having a hard time with.</p> <p>13 <b>Q How do you know --</b></p> <p>14 A They sent us a whole list, "These are all the items</p> <p>15 that we could use." And we are not glove experts, but we are</p> <p>16 experts in procuring items that are difficult to get.</p> <p>17 <b>Q How do you know how many of these items Ascension</b></p> <p>18 <b>would have purchased from Rock Fintek?</b></p> <p>19 A I believe Ascension had told us on the glove side,</p> <p>20 it was about a billion gloves a year they were purchasing, and</p> <p>21 they have a three-year contract which was going to come up for</p> <p>22 RFP, and we could bid on it obviously if everything went well.</p> <p>23 And we talked to them about the testing kits, and they told us</p> <p>24 in an e-mail that, "We'll take X amount of these testing kits</p> <p>25 if they are FDA approved and done."</p>	<p style="text-align: right;">Page 19</p> <p>1 It's right there. It says, "Approximately \$32 million from</p> <p>2 Medcare."</p> <p>3 <b>Q We are talking about revenue, correct?</b></p> <p>4 A What's that?</p> <p>5 <b>Q You said the \$32 million is unrelated to Medcare,</b></p> <p>6 <b>right?</b></p> <p>7 A Only \$32 million -- yeah. It's unrelated.</p> <p>8 <b>Q And that's revenue?</b></p> <p>9 A Correct.</p> <p>10 <b>Q How was Rock Fintek's profit higher than that</b></p> <p>11 <b>revenue?</b></p> <p>12 A Probably maybe the referrals that they gave us and</p> <p>13 some of the other business.</p> <p>14 <b>Q So you're not talking specifically about business</b></p> <p>15 <b>with Ascension?</b></p> <p>16 A I'm talking about when everything collapsed with</p> <p>17 Ascension, we lost all of our cashflow to continue to do</p> <p>18 business and provide anything to anybody else because we were</p> <p>19 trying to fix the damage for about a year and a half with</p> <p>20 Ascension. Essentially, it put Rock Fintek out of business</p> <p>21 trying just to damage control the relationship with Ascension.</p> <p>22 <b>Q Didn't we establish at the very beginning of this</b></p> <p>23 <b>deposition that your testimony was concerning the value of</b></p> <p>24 <b>Rock Fintek's lost business with Ascension?</b></p> <p>25 A My lost business with Ascension is related to lost</p>
<p style="text-align: right;">Page 18</p> <p>1 So we hired FDA attorneys. We started making the testing</p> <p>2 kits to be able to sell them which were much higher margins</p> <p>3 than we were making on anything else. Any product on their</p> <p>4 list, we could get they would buy. They gave us a whole list.</p> <p>5 <b>Q You're sitting here testifying -- again, you put a</b></p> <p>6 <b>number on this. You said, "At least \$36 million per year in</b></p> <p>7 <b>profits."</b></p> <p>8 <b>So, first, do you acknowledge that would be far more</b></p> <p>9 <b>profits than, you know, on an annual basis than Rock Fintek</b></p> <p>10 <b>had made from Ascension in prior years?</b></p> <p>11 A No.</p> <p>12 <b>Q You don't agree with that?</b></p> <p>13 A No.</p> <p>14 <b>Q What were the profits that Rock Fintek made from</b></p> <p>15 <b>Ascension between March 2020 and February 2021?</b></p> <p>16 A In February 2021?</p> <p>17 <b>Q Yeah.</b></p> <p>18 A We made approximately -- like I said, we brought in</p> <p>19 approximately \$62 million. Made payments to suppliers at</p> <p>20 \$14.5 million approximately, and paid logistics approximately</p> <p>21 \$6.1 million, and then we went ahead and deducted that and</p> <p>22 came out \$36 million in profit.</p> <p>23 <b>Q Up to February 2021?</b></p> <p>24 A Correct. I don't know if it's up -- it might be</p> <p>25 after February 2021. I'm not sure of the exact date it ended.</p>	<p style="text-align: right;">Page 20</p> <p>1 business to other people I was doing business with. If</p> <p>2 Ascension had been successful and I had the correct gloves,</p> <p>3 all the other business would have kept going with the other</p> <p>4 clients.</p> <p>5 <b>Q So specifically with Ascension, just Ascension, what</b></p> <p>6 <b>was the profits that Rock Fintek made between March 2020 and</b></p> <p>7 <b>the time it entered into --</b></p> <p>8 A The entire time --</p> <p>9 (Simultaneous colloquy.)</p> <p>10 THE WITNESS: The entire time -- the entire profit was</p> <p>11 \$36 million. I don't know up to February. The entire time</p> <p>12 was \$36 million. That's your answer. You're going to ask it</p> <p>13 10 more times, I'm going to give you the same answer the same</p> <p>14 way. It's \$36 million.</p> <p>15 BY ATTORNEY SPERBER:</p> <p>16 <b>Q You did testify that you lost money on the PO for</b></p> <p>17 <b>the 200 million gloves, correct?</b></p> <p>18 A I did what?</p> <p>19 <b>Q You lost money -- Rock Fintek lost money on the</b></p> <p>20 <b>purchase order for 200 million gloves, correct?</b></p> <p>21 A Correct.</p> <p>22 <b>Q So clearly there was no profit on that aspect of</b></p> <p>23 <b>Rock Fintek's business, correct?</b></p> <p>24 A Correct, loss. We had about 40 percent of our</p> <p>25 margin including about 40 percent of the truck and supply</p>



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<p>Page 21</p> <p>1 costs.</p> <p>2 <b>Q So any profits Rock Fintek made were prior to that,</b></p> <p>3 <b>correct?</b></p> <p>4 A Yeah, and legal -- yeah.</p> <p>5 <b>Q And am I correct that Rock Fintek had approximately</b></p> <p>6 <b>\$20 -- \$24 million in revenue with Ascension prior to that</b></p> <p>7 <b>purchase order at issue in this --</b></p> <p>8 A \$24 million --</p> <p>9 ATTORNEY RAKHUNOV: So I don't know if that was just me.</p> <p>10 I just didn't hear the last two words you said, Alex.</p> <p>11 BY ATTORNEY SPERBER:</p> <p>12 <b>Q Am I correct that Rock Fintek had approximately</b></p> <p>13 <b>\$24 million in revenue with Ascension prior to the purchase</b></p> <p>14 <b>order at issue in this lawsuit?</b></p> <p>15 A "\$24 million"? We had \$32 million unrelated.</p> <p>16 ATTORNEY SPERBER: Okay. Let me show you -- I will mark</p> <p>17 this as Kato Expert 2.</p> <p>18 (Exhibit Kato Expert 2 was marked for</p> <p>19 identification.)</p> <p>20 BY ATTORNEY SPERBER:</p> <p>21 <b>Q Do you see in front of you a deposition transcript</b></p> <p>22 <b>of Michael Elstro, dated November 13, 2023?</b></p> <p>23 A Yes.</p> <p>24 <b>Q You testified earlier that you reviewed this</b></p> <p>25 <b>testimony -- this deposition transcript prior to today's</b></p>	<p>Page 23</p> <p>1 have, but he's not the accounting department at Ascension, so</p> <p>2 this --</p> <p>3 <b>Q So are you telling me that if I were to go through</b></p> <p>4 <b>Rock Fintek's bank statements and add up the payments it</b></p> <p>5 <b>received prior to entering into the purchase order in this</b></p> <p>6 <b>lawsuit, I would find an excess of \$24 million in revenue from</b></p> <p>7 <b>Ascension?</b></p> <p>8 A That's what I believe.</p> <p>9 <b>Q I can tell you I've done that, and I did not find an</b></p> <p>10 <b>excess of \$24 million in revenue from Ascension.</b></p> <p>11 ATTORNEY RAKHUNOV: Objection.</p> <p>12 BY ATTORNEY SPERBER:</p> <p>13 <b>Q You are testifying today as an expert in Rock</b></p> <p>14 <b>Fintek's business, correct?</b></p> <p>15 A Yes, I am.</p> <p>16 <b>Q And you claim to have reviewed Rock Fintek's</b></p> <p>17 <b>finances and business records in preparing your expert</b></p> <p>18 <b>opinion?</b></p> <p>19 A Yes, I did.</p> <p>20 <b>Q So how is it that you don't know how much revenue</b></p> <p>21 <b>Rock Fintek was bringing in relation to its business with</b></p> <p>22 <b>Ascension?</b></p> <p>23 A I reviewed hundreds of pages of documents. So if</p> <p>24 you want to refer to a document, then I can tell you what it</p> <p>25 says. I don't have a photographic memory. I'm not claiming</p>
<p>Page 22</p> <p>1 <b>deposition, correct?</b></p> <p>2 A Correct.</p> <p>3 <b>Q Turn to page 13 of Mr. Elstro's deposition</b></p> <p>4 <b>transcript. Page 13, line 10, I will read you the testimony</b></p> <p>5 <b>I'm looking at here. This is a question by Mr. Frisch.</b></p> <p>6 <b>"Q Prior to the -- the purchase order for the gloves in</b></p> <p>7 <b>question here, how much business had you had done with Rock</b></p> <p>8 <b>Fintek?</b></p> <p>9 <b>"A During the term of our engagement with Rock Fintek,</b></p> <p>10 <b>we ordered and received close to \$24 million in other medical</b></p> <p>11 <b>products, the 3-ply masks, KN-95 and isolation gowns."</b></p> <p>12 <b>Do you see where I am over there?</b></p> <p>13 A Yes, I do.</p> <p>14 <b>Q So am I correct in understanding that prior to the</b></p> <p>15 <b>purchase order for 200 million gloves at issue in this</b></p> <p>16 <b>lawsuit, Rock Fintek had only actually done \$24 million in</b></p> <p>17 <b>revenue from Ascension?</b></p> <p>18 A No.</p> <p>19 <b>Q "No"?</b></p> <p>20 A No. Mr. Elstro is not an expert in accounting at</p> <p>21 Ascension. He doesn't work in accounting. Sonya does, and</p> <p>22 Sonya knows exactly the amounts that came in and out, not</p> <p>23 Mr. Elstro.</p> <p>24 The accounting department would. So, Mr. Elstro is not</p> <p>25 in accounting. I don't know what numbers he has or doesn't</p>	<p>Page 24</p> <p>1 to have a photographic memory either. So show me the</p> <p>2 document, I can tell you. I reviewed them. Yes. Expert in</p> <p>3 Rock Fintek's business, Rock Fintek had to stop all other work</p> <p>4 with all other clients and not give any attention to anybody</p> <p>5 else to focus on mitigating the damages that was caused by</p> <p>6 Ascension by giving them the wrong products, fake products.</p> <p>7 That's where all -- the whole business collapsed.</p> <p>8 <b>Q Well, when you're projecting \$36 million per year in</b></p> <p>9 <b>profits for three years from Rock Fintek's business with</b></p> <p>10 <b>Ascension, which products would those profits have arisen</b></p> <p>11 <b>from?</b></p> <p>12 ATTORNEY RAKHUNOV: Objection. Asked and answered.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: Okay. So gloves, masks, gowns, testing</p> <p>15 kits we were working on, and the business we were doing in</p> <p>16 Australia with the hospital, their sister hospital there and</p> <p>17 UA Health.</p> <p>18 BY ATTORNEY SPERBER:</p> <p>19 <b>Q You're aware, correct, that Rock Fintek{sic}</b></p> <p>20 <b>testified that as of June 2021 it had no need for additional</b></p> <p>21 <b>gloves from Rock Fintek in the short term?</b></p> <p>22 ATTORNEY RAKHUNOV: Objection.</p> <p>23 THE WITNESS: They had no need for additional gloves</p> <p>24 because the gloves we gave them were fake, and they wanted to</p> <p>25 return them. That's why.</p>

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<p>1 BY ATTORNEY SPERBER:</p> <p>2 <b>Q Well, if we go and look on page 55 of Mr. Elstro's</b></p> <p>3 <b>deposition transcript --</b></p> <p>4 A Page what?</p> <p>5 <b>Q 55.</b></p> <p>6 A Okay.</p> <p>7 <b>Q Look at --</b></p> <p>8 A Hold on. Rock Fintek --</p> <p>9 <b>Q -- line 18, "Were you interested in continuing to</b></p> <p>10 <b>buy Medicare gloves?"</b></p> <p>11 <b>There is an objection.</b></p> <p>12 <b>And then the witness on line 23 answers, "I would say</b></p> <p>13 <b>that in June of 2021 after receiving close to 200 million</b></p> <p>14 <b>gloves, we weren't thinking about purchasing additional gloves</b></p> <p>15 <b>at that very moment. I believe the 200 million gloves would</b></p> <p>16 <b>be well north of six months for usage for our provider base.</b></p> <p>17 <b>We were good with that based upon pandemic stock need to build</b></p> <p>18 <b>that up."</b></p> <p>19 <b>Do you see where I am there?</b></p> <p>20 A Yes.</p> <p>21 <b>Q So, again, this is a document that you testified</b></p> <p>22 <b>earlier you relied upon in your projections for Rock Fintek's</b></p> <p>23 <b>future profit --</b></p> <p>24 A Because he said this here, and at the same time,</p> <p>25 they're telling us we can bid on a contract that's one billion</p>	<p>Page 25</p> <p>1 <b>Fintek was allowed to do was bid. They weren't guaranteed a</b></p> <p>2 <b>contract, correct?</b></p> <p>3 A Based on the amount of business they gave us</p> <p>4 already -- they interviewed 2,000 companies. We were one of</p> <p>5 30. And then out of the 30, they told us we were probably the</p> <p>6 top three companies that were able to deliver to them, so they</p> <p>7 were very happy to keep us. And in case another pandemic or</p> <p>8 virus D-X came along later, they would have someone who was</p> <p>9 outside of their normal chain of suppliers that they're</p> <p>10 continuing to do business with that they can rely on.</p> <p>11 <b>Q Again, they never guaranteed Rock Fintek a contract,</b></p> <p>12 <b>correct?</b></p> <p>13 A No. There is no guarantee. They said we can go</p> <p>14 ahead and bid on it if everything goes well. As Mike Elstro</p> <p>15 testified, he believes that he -- very likely they will still</p> <p>16 be doing business with us as of today.</p> <p>17 So if you want to take \$62 million that I did in about a</p> <p>18 year with them and then take that over from 2020 to 2024,</p> <p>19 that's -- it's a large number. And I believe from my track</p> <p>20 record with business, we've just been growing so the number</p> <p>21 wouldn't have been lower. It would have been much higher.</p> <p>22 <b>Q In order to have a chance at winning that bid, would</b></p> <p>23 <b>Rock Fintek had to put together a very competitive offer?</b></p> <p>24 A Well, yeah. We actually won the \$200 million</p> <p>25 contract -- 200 million glove contract, which was the highest</p>
<p>1 gloves a year for three years.</p> <p>2 <b>Q Is that -- is that what they told you?</b></p> <p>3 A Yes. They said we can bid on it. If everything</p> <p>4 went well with what we were delivering, I see no reason why we</p> <p>5 wouldn't be able to do it, that was Dewayne Rader at Ascension</p> <p>6 Health that said that.</p> <p>7 <b>Q Now, how do you know that if Rock Fintek had bid on</b></p> <p>8 <b>that contract it would have gotten the purchase order?</b></p> <p>9 A Because Rock Fintek did a lot of good stuff to keep</p> <p>10 goodwill with Ascension. For example, we sent them a million</p> <p>11 dollars worth of masks. And then two months later, we sent</p> <p>12 another million dollars worth of masks, except some -- they</p> <p>13 didn't like two months later what the label said on the box.</p> <p>14 It didn't comply with what they needed as PPE had evolved, and</p> <p>15 they said now they need to be more compliant to what it says</p> <p>16 on the box. So to keep the relationship with them we said,</p> <p>17 "You can just keep the gloves, the masks, and we are going to</p> <p>18 donate them."</p> <p>19 Same thing happened with the protection gloves. Same</p> <p>20 thing happened with gowns. We gave them discounts, and we let</p> <p>21 them keep millions of dollars of goods just to build the</p> <p>22 goodwill with them. They appreciated it, the goodwill, and it</p> <p>23 kept the relationship going. That's where I came up with</p> <p>24 that.</p> <p>25 <b>Q Again, according to your own recollection, all Rock</b></p>	<p>Page 26</p> <p>1 contract that they -- one of the highest contracts they</p> <p>2 awarded outside the company that's -- they didn't start using.</p> <p>3 So we were -- we already proved that we won one. So if we can</p> <p>4 win 200 million, why wouldn't we bin a billion?</p> <p>5 <b>Q Am I correct in understanding that in order to put</b></p> <p>6 <b>together a competitive offer, Rock Fintek would have had</b></p> <p>7 <b>to lower its profit margins on the gloves it was selling,</b></p> <p>8 <b>correct?</b></p> <p>9 A If we signed a long-term contract, we would have</p> <p>10 been able to make a decent margin.</p> <p>11 <b>Q What was that?</b></p> <p>12 A We would have been able to -- I believe to be at</p> <p>13 least at 30 percent.</p> <p>14 <b>Q How do you know that?</b></p> <p>15 A Because I know what the purchase price of the gloves</p> <p>16 were going to be and what the sale price of the gloves were</p> <p>17 going to be.</p> <p>18 <b>Q Really? When you were sitting there in -- when they</b></p> <p>19 <b>told you this bid offer -- this bid offer opportunity was</b></p> <p>20 <b>open, how did you know what the purchase price was going to</b></p> <p>21 <b>be?</b></p> <p>22 A They were going pre-pandemic costs of gloves.</p> <p>23 <b>Q You do realize that the testimony you're giving</b></p> <p>24 <b>right now is not in alignment with the testimony of</b></p> <p>25 <b>Mr. Elstro, correct?</b></p>
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<p style="text-align: right;">Page 29</p> <p>1 ATTORNEY RAKHUNOV: Objection.</p> <p>2 THE WITNESS: Mr. Elstro said he would -- he says very</p> <p>3 likely that he would be doing business with us still, so --</p> <p>4 BY ATTORNEY SPERBER:</p> <p>5 <b>Q And you think --</b></p> <p>6 A I don't understand what you think that he would be</p> <p>7 doing -- that most likely be doing business with us in what if</p> <p>8 it's not products that we previously sold them?</p> <p>9 <b>Q He said that talking about the short-term, correct?</b></p> <p>10 A No. He said they were still doing business with</p> <p>11 other companies and would most likely still being doing</p> <p>12 business with us, and they told us that they would like to</p> <p>13 keep us in the relationship working with them on an ongoing</p> <p>14 basis. This was told to me. It's not my opinion, and he</p> <p>15 testified to it.</p> <p>16 And from my experience as an entrepreneur, I believe that</p> <p>17 I would have done much more revenue with them going forward</p> <p>18 than I did in the past, and I believe it would have branched</p> <p>19 out to Australia and continued instead of getting a 4 million</p> <p>20 mask canceled order. They took 100,000 masks instead of the</p> <p>21 4 million they wanted. That's -- in that business, we were</p> <p>22 the first vendor for Australia to supply a public health</p> <p>23 system with a private health system a product that they</p> <p>24 jointly bought and procured together, and then that was ended</p> <p>25 immediately when they started getting those e-mails from</p>	<p style="text-align: right;">Page 31</p> <p>1 <b>Mr. Elstro testifies specifically that Ascension or the</b></p> <p>2 <b>Resource Group "never talked to them" referring to Rock Fintek</b></p> <p>3 <b>"about a specific, like, long-term contract or bidding on a</b></p> <p>4 <b>long-term nitrile glove business for the organization."</b></p> <p>5 <b>Do you see that?</b></p> <p>6 A I had a conversation with Dewayne Rader, with</p> <p>7 Bradley Gilling, with two other people from Ascension at the</p> <p>8 hospital -- at one of their hospitals -- maybe in Tennessee --</p> <p>9 I believe we met them and pulled up on the computer, he showed</p> <p>10 us the contract, "This is what you can go ahead and bid on."</p> <p>11 We went behind Dewayne Rader's desk in looking at the</p> <p>12 numbers and looking at the products that they have ongoing</p> <p>13 contracts with, and says, "Yes. If everything is good with</p> <p>14 your product, I see no reason why we wouldn't let you give us</p> <p>15 a bid on this."</p> <p>16 And my opinion as an entrepreneur, when I deliver</p> <p>17 200 million gloves successfully, why not deliver 400 million</p> <p>18 or a billion? There is no -- there's no reason not to get the</p> <p>19 bid. And with the prices we had secured from Intco, we had</p> <p>20 good profit margin pre-COVID prices so we would have been very</p> <p>21 competitive. Let them have a savings and gave them a reliable</p> <p>22 glove that they were already familiar with. He showed us the</p> <p>23 entire glove buy.</p> <p>24 <b>Q You testified earlier that Rock Fintek was planning</b></p> <p>25 <b>to sell COVID test kits to Ascension; is that correct?</b></p>
<p style="text-align: right;">Page 30</p> <p>1 Ascension that we gave them bad products. So I believe we</p> <p>2 would have been much higher than the \$62 million in revenue.</p> <p>3 <b>Q You believe?</b></p> <p>4 A I believe that Australia alone could have been</p> <p>5 \$62 million.</p> <p>6 <b>Q That's not with Fintek, right -- that's not</b></p> <p>7 <b>Ascension, correct?</b></p> <p>8 A That's Ascension's sister company. That's who</p> <p>9 referred us. That's how we got the business, and that's how</p> <p>10 the business stopped was from Ascension.</p> <p>11 We secured all the gloves, procured them, put deposits --</p> <p>12 the masks, and then they canceled the order after we have all</p> <p>13 the stuff going on with Ascension with fake gloves that we</p> <p>14 gave them. We went from 4 million to 100,000.</p> <p>15 <b>Q If you can turn to page 41 on Mr. Elstro's</b></p> <p>16 <b>testimony. Please let me know when you're there.</b></p> <p>17 A And the billion-dollar -- the billion supplied</p> <p>18 gloves, we've been talking to Intco to supply them to us at</p> <p>19 very, very good prices that would have been -- would have met</p> <p>20 those profitability margins that I told you with pre-COVID</p> <p>21 prices.</p> <p>22 What page did you say?</p> <p>23 <b>Q 41.</b></p> <p>24 A "41."</p> <p>25 <b>Q Starting at line 2 and going through line 9 where</b></p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes, and two others, not just -- not just Ascension.</p> <p>2 <b>Q Am I correct in understanding that Rock Fintek never</b></p> <p>3 <b>got those COVID test kits FDA approved?</b></p> <p>4 A Rock Fintek had to stop and didn't have the funds</p> <p>5 anymore after we got the fraudulent gloves, and we had to do</p> <p>6 damage control and stop trying to even think about selling any</p> <p>7 other products or get other products approved. We started</p> <p>8 them. We made the product. We had made tests of them. We</p> <p>9 contacted the FDA attorneys to get them approved. We started</p> <p>10 working on it.</p> <p>11 When all the fraud happened, we had to stop everything</p> <p>12 because we couldn't afford to continue. All our time and</p> <p>13 energy was trying to return the gloves, sell the gloves to</p> <p>14 somebody else and save the relationship which ended up</p> <p>15 failing.</p> <p>16 <b>Q Now, I asked in discovery for documentation</b></p> <p>17 <b>concerning the COVID-19 test kits, and the response I got</b></p> <p>18 <b>was -- would only be produced if they related to Rock Fintek</b></p> <p>19 <b>damage claim, and they were not produced.</b></p> <p>20 <b>So it's my understanding that Rock Fintek did not premise</b></p> <p>21 <b>its damage claim upon the COVID-19 test kits, and so --</b></p> <p>22 A We are not?</p> <p>23 ATTORNEY RAKHUNOV: Objection.</p> <p>24 THE WITNESS: I'm telling you we are. We started doing</p> <p>25 test kits. We talked about it with Ascension about supplying</p>



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<p style="text-align: right;">Page 33</p> <p>1 the test kits. They were happy to see them if they were FDA  2 approved. We found other test kits that were also already FDA  3 approved that we could have just sold and resold at very large  4 margins -- probably 80 percent profit margins because we were  5 going to buy them for similar costs. We had -- we would have  6 had even similar margins. We just wanted to make our own to  7 control it, so that part of the business was going to happen.  8 <b>Q Is it your testimony there is no documentation</b>  9 <b>concerning COVID-19 test kits?</b>  10 A Of course there's documentation. We have lawyers --  11 (Simultaneous colloquy.)  12 (Reporter clarification.)  13 BY ATTORNEY SPERBER:  14 <b>Q Since it was not produced, it's my understanding</b>  15 <b>that's not part of Rock Fintek's damages. So my question for</b>  16 <b>you then is --</b>  17 ATTORNEY RAKHUNOV: Objection to the comments.  18 You don't have to respond to counsel's comments. Just  19 wait for a question.  20 BY ATTORNEY SPERBER:  21 <b>Q What percent of the \$36 million per year in</b>  22 <b>projected profits for three years was made up of these</b>  23 <b>COVID-19 test kit sales?</b>  24 A Going forward?  25 <b>Q For the three years that you -- for which you're</b></p>	<p style="text-align: right;">Page 35</p> <p>1 focus was not the gowns or the masks. It was the gloves.  2 That's our primary focus in the growth. That profit that I'm  3 talking about is coming from gloves. That is not coming from  4 anything else.  5 <b>Q So the \$36 million a year in profits, that's solely</b>  6 <b>based upon a projection of glove sales to Ascension?</b>  7 A I sold them three products. I'm saying the lion's  8 share of the projection is coming from gloves. And then on  9 top of it, which is not in that number, would have been the  10 test kits and not -- what else is not in it is the business  11 that we lost in Australia selling them masks.  12 We sold them KN-95s, 3-ply mask, gowns and gloves. That  13 was it. The test kits was a future product that we were  14 looking to do that's outside of these numbers.  15 <b>Q And, again, can you walk me through the formula for</b>  16 <b>your projected future profits based upon glove sales from</b>  17 <b>Ascension? Let's start at the beginning. How many gloves did</b>  18 <b>Rock Fintek expect to sell to Ascension in the second half of</b>  19 <b>2021?</b>  20 ATTORNEY RAKHUNOV: Objection.  21 THE WITNESS: "Second half of 2021"? I believe minimum  22 200 million, same order.  23 BY ATTORNEY SPERBER:  24 <b>Q What's that based upon?</b>  25 A If we delivered gloves, the masks -- the gloves</p>
<p style="text-align: right;">Page 34</p> <p>1 <b>claiming lost profits?</b>  2 A The COVID test kits, they were in the hundreds or  3 thousands or millions, so --  4 <b>Q Of kits?</b>  5 A As of the number we gave you now, we were just  6 talking about existing product that we have already sold to  7 them. That would have been on top of that number, the test  8 kits.  9 <b>Q I'm sorry. I did not understand your answer. Could</b>  10 <b>you explain?</b>  11 A The test kits' profitability is not in the numbers  12 that we gave you -- that I gave you. It's on top of it.  13 <b>Q Okay. So in the numbers that you gave me which</b>  14 <b>specific products were -- was Rock Fintek projected to be</b>  15 <b>selling to Ascension over the next three years?</b>  16 A Gowns, masks, gloves.  17 <b>Q Okay. We've already been over the glove issue. Do</b>  18 <b>you know that Rock Fintek -- that Ascension needed additional</b>  19 <b>gowns from -- that was willing to purchase from Ascension(sic)</b>  20 <b>over the next three years?</b>  21 A Say that one more time.  22 <b>Q Do you know or is there any evidence that would</b>  23 <b>support your assertion that Rock Fintek could have sold</b>  24 <b>additional gowns to Ascension in the next three years?</b>  25 A I'm sure they would have bought it, but our primary</p>	<p style="text-align: right;">Page 36</p> <p>1 satisfactory, they were interested in continuing with us. As  2 their supply ran down, they would want more.  3 <b>Q Okay. And how about -- how many gloves was Rock</b>  4 <b>Fintek projecting to sell to Ascension in 2022?</b>  5 A In 2022, we would have had the opportunity to sell  6 1 billion.  7 <b>Q I'm sorry?</b>  8 A One billion gloves.  9 <b>Q One billion with a "B"?</b>  10 A Yeah, with a "B." 200 million, so it's -- we  11 already supplied one-fifth of that.  12 <b>Q Okay. And how many gloves was Rock Fintek</b>  13 <b>projecting to sell to Ascension in 2022?</b>  14 A One billion.  15 <b>Q And same question for 2024?</b>  16 A Yes.  17 <b>Q How many gloves --</b>  18 A And if you wanted to give a conservative estimate  19 that's how I gave the calculation of the profitability, then  20 it would be only 200 million a year -- each year.  21 <b>Q Okay.</b>  22 A The same amount that I already did. Optimistically,  23 we would have done a billion. Conservatively, we would have  24 reached our 200 million.  25 <b>Q Okay. That is based upon your expectation that you</b></p>

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<p style="text-align: right;">Page 37</p> <p>1 <b>would have won a bid for the contracts with Ascension; is that</b></p> <p>2 <b>correct?</b></p> <p>3 A The billion would have been a bid. The 200 million</p> <p>4 would have just been another order like we placed already;</p> <p>5 that we have proven ourselves, that we delivered when other</p> <p>6 people couldn't deliver. We delivered on time, and we</p> <p>7 delivered quality products. So the 200 million would not have</p> <p>8 been a bid that we would have had to win. The billion would</p> <p>9 have been a bid that we had to win.</p> <p>10 <b>Q And you're making this projection for the</b></p> <p>11 <b>200 million in the second half of 2021 even though Mr. Elstro</b></p> <p>12 <b>testified that Ascension was not interested in purchasing</b></p> <p>13 <b>additional gloves at that time?</b></p> <p>14 A I don't think Ascension was interested in doing</p> <p>15 anything with Rock Fintek come June/July of 2021 after what</p> <p>16 happened. We became a very sour note in their minds so they</p> <p>17 were not interested in really doing anything with us.</p> <p>18 <b>Q Okay. And, then again, in 2022, this is the</b></p> <p>19 <b>1 billion gloves that based upon this bid that you were hoping</b></p> <p>20 <b>to win, and same thing for 2023?</b></p> <p>21 A So we would have got the 200 million gloves. We</p> <p>22 would presume we would match the same amount that we did the</p> <p>23 previous year at 200 million, and with the hope to get the</p> <p>24 1 billion glove order on top of it.</p> <p>25 <b>Q Now, again, just to understand your profit</b></p>	<p style="text-align: right;">Page 39</p> <p>1 what we would have made in 2020.</p> <p>2 <b>Q I'm sorry? How much?</b></p> <p>3 A Similar number at the 40 percent margin.</p> <p>4 <b>Q What are you referring to? I'm sorry?</b></p> <p>5 A If you go back to that page where it told you how</p> <p>6 much profit that we lost --</p> <p>7 <b>Q You're talking about the Kato Expert Exhibit 1?</b></p> <p>8 A I don't see it yet.</p> <p>9 <b>Q Hold on.</b></p> <p>10 ATTORNEY RAKHUNOV: The first document we looked at?</p> <p>11 ATTORNEY SPERBER: Yes.</p> <p>12 THE WITNESS: Okay. So minus some of the losses that we</p> <p>13 got with Skymed with the original order.</p> <p>14 BY ATTORNEY SPERBER:</p> <p>15 <b>Q For the record now, I'm showing you what was</b></p> <p>16 <b>previously marked as Kato Expert 1.</b></p> <p>17 A Yes. So, let me scroll -- there you go,</p> <p>18 "\$36 million." So some of the losses came from us sending the</p> <p>19 deposit -- large amount of money to Skymed so that was part of</p> <p>20 the loss.</p> <p>21 <b>Q So, again, what -- give me a dollar amount. How</b></p> <p>22 <b>much money in profits would Rock Fintek have made in the</b></p> <p>23 <b>second half of 2021?</b></p> <p>24 ATTORNEY RAKHUNOV: Objection to form. I don't know what</p> <p>25 that means.</p>
<p style="text-align: right;">Page 38</p> <p>1 <b>projections -- so the 200 million gloves Rock Fintek delivered</b></p> <p>2 <b>up until June of 2021, Rock Fintek lost money, correct?</b></p> <p>3 A Repeat that.</p> <p>4 <b>Q On the 200 million gloves that Rock Fintek delivered</b></p> <p>5 <b>pursuant to the purchase order at issue in this lawsuit, Rock</b></p> <p>6 <b>Fintek lost money. You said that earlier, correct?</b></p> <p>7 A Yes, correct.</p> <p>8 <b>Q So we would project further losses for the second</b></p> <p>9 <b>half of 2021?</b></p> <p>10 ATTORNEY RAKHUNOV: Objection.</p> <p>11 THE WITNESS: No, I would not have. Because if I didn't</p> <p>12 have fraudulent gloves, I would have been extremely</p> <p>13 profitable.</p> <p>14 BY ATTORNEY SPERBER:</p> <p>15 <b>Q Can you explain that?</b></p> <p>16 A We have would have made -- the profit that I wrote</p> <p>17 in the letter is how much profit we would have made each year</p> <p>18 for the next three years if we had not received fraudulent</p> <p>19 gloves. This was catastrophic. You've got to understand that</p> <p>20 you couldn't get gloves. They were struggling with supply</p> <p>21 with normal channel chains, and we earned the opportunity to</p> <p>22 deliver to them.</p> <p>23 <b>Q So how much money would Rock Fintek have made in</b></p> <p>24 <b>profits on the 200 million gloves for the second half of 2021?</b></p> <p>25 A The second have of 2021 how much profit? Similar to</p>	<p style="text-align: right;">Page 40</p> <p>1 THE WITNESS: We would have made -- let me see --</p> <p>2 \$36 million is what we calculated. Well, I gotta zoom this</p> <p>3 the right way.</p> <p>4 ATTORNEY RAKHUNOV: Don't think out loud, Thomas, because</p> <p>5 then the court reporter has to take that down.</p> <p>6 THE WITNESS: Sorry about that.</p> <p>7 There you go, "Mr. Kato expects Rock Fintek would have</p> <p>8 lost at least approximately \$36 million per year in profits</p> <p>9 for at least three years."</p> <p>10 BY ATTORNEY SPERBER:</p> <p>11 <b>Q So how did Rock Fintek expect to generate</b></p> <p>12 <b>\$36 million in profits selling those 200 million gloves if</b></p> <p>13 <b>that's what you are testifying to?</b></p> <p>14 A We also sold them masks. We also sold them other</p> <p>15 products.</p> <p>16 <b>Q Right, but I'm asking specifically about the gloves.</b></p> <p>17 A From our good name and ability to deliver, they were</p> <p>18 willing to pay a premium to us because of our good name and</p> <p>19 past history with them.</p> <p>20 <b>Q Well, for the 200 million gloves at issue, you know,</b></p> <p>21 <b>in this lawsuit, Rock Fintek was paid by Ascension</b></p> <p>22 <b>approximately \$37 million, correct?</b></p> <p>23 A Yes.</p> <p>24 <b>Q So would it have been paid a similar amount for the</b></p> <p>25 <b>next 200 million gloves? Is that what you're testifying to?</b></p>

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<p>Page 41</p> <p>1 A In 2020?</p> <p>2 <b>Q 2021.</b></p> <p>3 A In 2021, everything was already done. Dead.</p> <p>4 <b>Q Oh, so -- Rock Fintek was not --</b></p> <p>5 A After we got the fake gloves, everything died in</p> <p>6 2021. The whole relationship died, so -- any profits were</p> <p>7 dead. Relationship was dead.</p> <p>8 <b>Q You're claiming lost profits here, right?</b></p> <p>9 A I'm claiming if I had sold gloves that weren't</p> <p>10 fraudulent and I had not lost anything, then yes.</p> <p>11 <b>Q So my question is: How much money would Rock Fintek</b></p> <p>12 <b>have made in the second half of 2021 had it not sold to</b></p> <p>13 <b>Ascension what you're claiming were fraudulent gloves?</b></p> <p>14 A How much it would have made total?</p> <p>15 <b>Q Yes.</b></p> <p>16 A With Ascension? The contract, at least \$36 million.</p> <p>17 <b>Q In revenue or profits?</b></p> <p>18 A Profits.</p> <p>19 <b>Q Where is that number coming from?</b></p> <p>20 A I explained that to you already.</p> <p>21 <b>Q But I -- I can't --</b></p> <p>22 A \$62 million in payments, \$19 million in suppliers,</p> <p>23 \$6 million in trucking/logistics. Profit left is \$36 million.</p> <p>24 <b>Q So you're saying for the second -- so in business</b></p> <p>25 <b>year 2021, Rock Fintek would have made an additional</b></p>	<p>Page 43</p> <p>1 <b>Q Which specific documentation?</b></p> <p>2 A We have gloves, masks that we were procuring from</p> <p>3 the price we were buying, price they're willing to sell them,</p> <p>4 we were going to continue selling them products that we had in</p> <p>5 the past.</p> <p>6 <b>Q Do you have any evidence that Ascension was willing</b></p> <p>7 <b>to purchase those products from you in 2021?</b></p> <p>8 A Yeah. Banks records from the past history.</p> <p>9 <b>Q That was prior purchases. I'm talking about future</b></p> <p>10 <b>purchases.</b></p> <p>11 A Well, they wanted to keep working with us. Every</p> <p>12 time they ordered, they ordered the same product with us over</p> <p>13 and over again. It wasn't a one time order of masks or gowns.</p> <p>14 It was multiple times.</p> <p>15 <b>Q Again, do you have any purchase orders that --</b></p> <p>16 A Yes.</p> <p>17 <b>Q -- that --</b></p> <p>18 A Yes.</p> <p>19 (Simultaneous colloquy.)</p> <p>20 ATTORNEY RAKHUNOV: One at a time.</p> <p>21 THE WITNESS: Yes, I do. They bought it in 2021. They</p> <p>22 bought masks in 2021. It's in the bank records.</p> <p>23 BY ATTORNEY SPERBER:</p> <p>24 <b>Q Again, were there any purchase orders that Rock</b></p> <p>25 <b>Fintek withdrew because of the dispute you had in June 2021?</b></p>
<p>Page 42</p> <p>1 <b>\$36 million in profits had --</b></p> <p>2 A Starting in --</p> <p>3 (Simultaneous colloquy.)</p> <p>4 ATTORNEY RAKHUNOV: Thomas, let him finish because</p> <p>5 otherwise --</p> <p>6 THE WITNESS: Okay.</p> <p>7 ATTORNEY RAKHUNOV: -- it's just going to be a mess.</p> <p>8 BY ATTORNEY SPERBER:</p> <p>9 <b>Q Sorry. Go ahead.</b></p> <p>10 A Starting in 2022?</p> <p>11 <b>Q No. No. Again --</b></p> <p>12 A I'm saying starting in 2022.</p> <p>13 <b>Q Okay. So your testimony is that Rock Fintek made</b></p> <p>14 <b>all the money it was going to make from Ascension in 2021?</b></p> <p>15 A Yes.</p> <p>16 <b>Q Okay. Fine. So there is no lost business profits</b></p> <p>17 <b>for 2021?</b></p> <p>18 A We lost masks and other products, not gloves.</p> <p>19 <b>Q Okay. How much money would you have made on those</b></p> <p>20 <b>masks and other products?</b></p> <p>21 A Approximately on the masks and other products, I</p> <p>22 believe close to \$10 million.</p> <p>23 <b>Q You say you believe that. Do you have any</b></p> <p>24 <b>documentation to support that assertion?</b></p> <p>25 A Yes.</p>	<p>Page 44</p> <p>1 A Say that again.</p> <p>2 <b>Q Were there any existing purchase orders for gloves</b></p> <p>3 <b>or anything else that Rock Fintek withdrew?</b></p> <p>4 A No.</p> <p>5 <b>Q "No"?</b></p> <p>6 A No. We did not make purchase orders in advance with</p> <p>7 them. We would talk to them on a daily or weekly basis. And</p> <p>8 whatever would be short that week or throughout that week,</p> <p>9 they would tell us, "We need this product," or "Here's a list</p> <p>10 of products we need the next few days, the next week, the next</p> <p>11 two weeks." It varied from when they needed them.</p> <p>12 And Adorama torched our relationship with Ascension.</p> <p>13 After that, they didn't want to talk to us about any other</p> <p>14 products again even though we had the same products we sold to</p> <p>15 them multiple times previous. And none of the previous orders</p> <p>16 were purchase orders. The purchase order was made on the day</p> <p>17 of the order. It wasn't in advance, "Let me give this to you</p> <p>18 in two months' notice." It was like, "We need this now." I</p> <p>19 said, "Okay." Specific products and specific times. They send</p> <p>20 us a list of products. Those lists stopped coming to us, and</p> <p>21 they didn't want to give us any list and didn't want to</p> <p>22 procure any other items from us.</p> <p>23 <b>Q Okay. But, again, this is all about your opinion</b></p> <p>24 <b>testimony as an expert concerning lost profits. That's what</b></p> <p>25 <b>I'm trying to get my arms around here.</b></p>

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<p style="text-align: right;">Page 45</p> <p>1 A I told you. I believe our lost products would have</p> <p>2 been \$36 million a year starting 2022. Each year after that</p> <p>3 following, conservatively I believe we could have made much</p> <p>4 more with the other relationships we had and of the products</p> <p>5 that we were going to sell them. We talked about needles. We</p> <p>6 talked about a syringe deal. We talked about the testing</p> <p>7 kits. We were a company that was delivering product when they</p> <p>8 asked us in a time when people were not delivering. Until</p> <p>9 that Adorama debacle, that's when it really crushed the</p> <p>10 relationship and the company.</p> <p>11 <b>Q Mr. Kato, we went over this last time, but what is</b></p> <p>12 <b>your highest level of education?</b></p> <p>13 A I am alumni from Harvard Business School.</p> <p>14 <b>Q Okay. At Harvard Business School did you take any</b></p> <p>15 <b>coursework in finance?</b></p> <p>16 A We did some. Yes.</p> <p>17 <b>Q Are you qualified to look at a business' books and</b></p> <p>18 <b>records and project future profits?</b></p> <p>19 A I believe my experience as an entrepreneur -- a</p> <p>20 successful entrepreneur over the decades does qualify me for</p> <p>21 that. Not as an accountant, but what it takes to buy and sell</p> <p>22 products and to make a profit.</p> <p>23 <b>Q You're saying -- referring to successful experience</b></p> <p>24 <b>as an entrepreneur; is that correct?</b></p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 47</p> <p>1 the \$36 million per year going forward.</p> <p>2 ATTORNEY SPERBER: Could we take a five-minute break?</p> <p>3 ATTORNEY RAKHUNOV: Yes.</p> <p>4 THE WITNESS: Okay.</p> <p>5 (Off the record.)</p> <p>6 BY ATTORNEY SPERBER:</p> <p>7 <b>Q I only have a couple more questions.</b></p> <p>8 <b>For 2023 and onwards, you were asserting that Rock Fintek</b></p> <p>9 <b>would be able to sell approximately a billion gloves to</b></p> <p>10 <b>Ascension each year based upon a bid that it would be</b></p> <p>11 <b>submitting or attempting to win a contract. If that were a</b></p> <p>12 <b>closed bid, how do you know what price Rock Fintek could have</b></p> <p>13 <b>sold gloves to Ascension at?</b></p> <p>14 ATTORNEY RAKHUNOV: You're muted.</p> <p>15 THE WITNESS: I believe that -- and what I said is that</p> <p>16 we could have bid on the RFP. We may or may not have won it.</p> <p>17 I believe we would have won it, but that's optimistically.</p> <p>18 Conservatively, we would have just got awarded the contract</p> <p>19 for 200 million more gloves as we did previously. We would</p> <p>20 have sold it to them for less, but we would have bought them</p> <p>21 for less. So at least I would have done the same amount of</p> <p>22 volume, and I probably would have done the same or more in</p> <p>23 masks.</p> <p>24 We even had spent money to brand our own masks to give</p> <p>25 them specifically for the hospital. We made Rock Fintek masks</p>
<p style="text-align: right;">Page 46</p> <p>1 <b>Q So that came from your experience in the business</b></p> <p>2 <b>world, not your experience necessarily at Harvard?</b></p> <p>3 A Harvard helped a lot, but mostly from my experience</p> <p>4 in the business world.</p> <p>5 <b>Q And --</b></p> <p>6 A I built all of my businesses with relationships. I</p> <p>7 kept my word. I did what I said I was going to do, and that's</p> <p>8 how I built my business. Offer long-term relationships, and I</p> <p>9 understand the value of a relationship. So like I gave</p> <p>10 Ascension, they wanted a million dollars worth of masks that</p> <p>11 they didn't want because they didn't like what it said on the</p> <p>12 box, I'm like, "That's my client. Client is always right.</p> <p>13 You can keep them. Donate them. Don't pay me for those."</p> <p>14 I had multiple products like that, and I believe you show</p> <p>15 goodwill to a customer, a client, they're going to reciprocate</p> <p>16 and give it back to you.</p> <p>17 <b>Q Okay. And that's the basis of your expert testimony</b></p> <p>18 <b>today, correct?</b></p> <p>19 ATTORNEY RAKHUNOV: Objection.</p> <p>20 THE WITNESS: The basis? I don't know if it's the basis</p> <p>21 of it, but my expertise is that I had a relationship with</p> <p>22 Ascension Hospitals, and I had built up enough goodwill and</p> <p>23 delivered on every product previously that they wanted before</p> <p>24 I gave them the gloves. And if it would went the same, that</p> <p>25 relationship I believe would have flourished much more than</p>	<p style="text-align: right;">Page 48</p> <p>1 for the hospital which we still have some.</p> <p>2 BY ATTORNEY SPERBER:</p> <p>3 <b>Q Do you know if Ascension post-pandemic was buying</b></p> <p>4 <b>gloves from suppliers outside of its bid system?</b></p> <p>5 ATTORNEY RAKHUNOV: Objection.</p> <p>6 THE WITNESS: From what I understand, Mike Elstro said</p> <p>7 they are still buying from vendors/suppliers like us 'til</p> <p>8 today.</p> <p>9 BY ATTORNEY SPERBER:</p> <p>10 <b>Q So is that through the bid system or not through the</b></p> <p>11 <b>bid system?</b></p> <p>12 A No, not through the bid system.</p> <p>13 <b>Q What are you basing that upon?</b></p> <p>14 A From what Mike Elstro said.</p> <p>15 <b>Q At his deposition?</b></p> <p>16 A Correct. He said, "We are most highly likely" --</p> <p>17 right on this line on page 2 here.</p> <p>18 <b>Q I'm sorry?</b></p> <p>19 A Mike Elstro said it would be highly likely that he</p> <p>20 would still be doing business with us. All the business they</p> <p>21 had done was not on a bid system.</p> <p>22 <b>Q He said that short-term, correct?</b></p> <p>23 A That was in -- the entire relationship we had with</p> <p>24 them was not on RFP or bid system. They sent us a list of</p> <p>25 products. We gave them the prices. They said yes or no, and</p>



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<p style="text-align: right;">Page 49</p> <p>1 then we procured them. The bid was -- Dewayne Rader showed  2 us, "This is the three-year contract. We can bid on a billion  3 gloves a year. If you're going to deliver 200 million good  4 quality gloves on time, then we are going to give you the  5 others." They were buying from us. There was no  6 short-term/long-term. It was just we were one of their  7 buyers, and they would still be buying from us today.  8 <b>Q If you're basing your opinions upon the deposition</b>  9 <b>testimony of Mike Elstro, how is it that you're not aware of</b>  10 <b>what he actually testified to?</b>  11 ATTORNEY RAKHUNOV: Objection.  12 THE WITNESS: Mike Elstro said that they were satisfied  13 with the gloves that they have 'til the end of the year.  14 Dewayne Rader who did not testify on Ascension took Bradley  15 and I behind his desk at one of their hospitals, showed us a  16 bid contract. You know, "You deliver the goods on those  17 gloves, you can bid on this if everything goes well."  18 Our existing business and other products that we were  19 already buying from, they would still give us a list of  20 products that they needed, and we would supply those things.  21 And all of those came from a non-bid system that we had won,  22 so all that revenue came from non-bid.  23 BY ATTORNEY SPERBER:  24 <b>Q All these assertions you're making about what</b>  25 <b>someone told you, that's all hearsay. What I want to</b></p>	<p style="text-align: right;">Page 51</p> <p>1 <b>Rader and others at Ascension?</b>  2 A No. Mine is based on products that I sold them in  3 the past.  4 <b>Q Okay. So that's it? Just products you sold in the</b>  5 <b>past?</b>  6 A Whatever I did in the past, I believe I was going to  7 at least do the same in the future if not more, and I believe  8 I would have done much more.  9 <b>Q What is the basis for your expert opinion that Rock</b>  10 <b>Fintek would have continued selling those products to</b>  11 <b>Ascension for the next three years?</b>  12 A I believe it would have been 10 years. Three years  13 is being conservative.  14 <b>Q Again, what is the basis for your opinion?</b>  15 A They were happy with our products. They kept  16 calling us and asking us for other products. We continued  17 giving products they wanted to purchase from us.  18 <b>Q That's it?</b>  19 A They were consistently since we started the  20 relationship ordering products from us.  21 <b>Q Anything else?</b>  22 A It ended after that.  23 <b>Q Anything else?</b>  24 A No.  25 ATTORNEY SPERBER: Okay. That's all I have for the</p>
<p style="text-align: right;">Page 50</p> <p>1 <b>understand is which evidence beyond that? You know, which</b>  2 <b>evidence has been produced in this lawsuit do you believe</b>  3 <b>supports what you're claiming are these lost future profits?</b>  4 A Mike Elstro told you that he believes that it would  5 be highly likely that they will still be doing business with  6 us today. This is 2024 right now.  7 <b>Q That is not what he said.</b>  8 A That is what he said.  9 <b>Q Let's go to the --</b>  10 ATTORNEY RAKHUNOV: Look. The transcript says what it  11 says. I don't know that it's productive for us to argue about  12 it.  13 THE WITNESS: Okay. Maybe I don't have the exact words.  14 I'm saying the essence of what he said.  15 BY ATTORNEY SPERBER:  16 <b>Q And that -- according to what -- according to your</b>  17 <b>testimony, that's the basis of your expert opinion?</b>  18 ATTORNEY RAKHUNOV: Objection.  19 THE WITNESS: My expert opinion is Dewayne Rader who were  20 dealing with primarily to procure items would send us a list  21 is the person. We had both Dewayne Rader, Elstro and Vince.  22 Three people there that we dealt with.  23 BY ATTORNEY SPERBER:  24 <b>Q Again, just to be clear, your expert opinion is</b>  25 <b>based upon a conversation you had supposedly with Dewayne</b></p>	<p style="text-align: right;">Page 52</p> <p>1 moment. I think Mr. Firsch has some questions for you as  2 well.  3 ATTORNEY FIRSCH: Yes, I do. Thank you, sir.  4 EXAMINATION  5 BY ATTORNEY FIRSCH:  6 <b>Q How long did you attend Harvard Business School for?</b>  7 A Three years.  8 <b>Q And what degree did you receive from Harvard</b>  9 <b>Business School?</b>  10 A I received an OPM.  11 <b>Q What does that stand for?</b>  12 A Owner President Managers.  13 <b>Q And what is that degree? What coursework is</b>  14 <b>required for that degree?</b>  15 A From what we were told, we were doing the same  16 coursework as the two-year MBA students were doing; all the  17 same cases, just at a faster speed.  18 <b>Q And you -- so this was the executive MBA program?</b>  19 A They call it OPM at Harvard Business School.  20 <b>Q This is not a -- this is just, you pay you get in?</b>  21 <b>Is there any competitive application --</b>  22 A No. Yeah, there is. You have to be referred, and  23 you have to be accepted. There is no you pay you get in.  24 <b>Q Okay. And where did you complete your undergraduate</b>  25 <b>studies?</b></p>



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<p>Page 53</p> <p>1 A I started at San Diego State, and then I did not 2 finish. 3 <b>Q So you dropped out of college?</b> 4 A I didn't continue at San Diego, no. 5 <b>Q Okay. And can you tell us in your business 6 experience as an entrepreneur when have you ever made 7 projections -- what experience do you have making projections 8 as to future profits?</b> 9 A Most of the business is being able to gauge where we 10 are going to be. 11 <b>Q Okay. Did you ever formally make such projections 12 in any of your businesses?</b> 13 ATTORNEY RAKHUNOV: Objection. 14 THE WITNESS: Yes. 15 BY ATTORNEY FIRSCH: 16 <b>Q And did you ever spend time reviewing your 17 projections subsequently to check how accurate they were?</b> 18 A Yes. 19 <b>Q And were they, in fact, accurate?</b> 20 A They were conservative. I exceeded most of the 21 projections. 22 <b>Q Can you tell us the name of these businesses and 23 some details as to your experience making profit projections?</b> 24 A I had a construction company. It was doing TIs in 25 the beginning.</p>	<p>Page 55</p> <p>1 really is. 2 A I would have look at them. I don't have it with me. 3 <b>Q All right. Now, as you stated, you're an expert, 4 right, in the damages that were caused by the parties in your 5 mind here. So you understand that JNS and Kitchen Winners are 6 different parties, correct?</b> 7 ATTORNEY RAKHUNOV: Objection. 8 THE WITNESS: Yes. I believe they are all different. 9 BY ATTORNEY FIRSCH: 10 <b>Q So what share of the damages, in your expert 11 opinion, were caused by JNS' alleged breach of the contract?</b> 12 ATTORNEY RAKHUNOV: Objection. Beyond the scope. 13 THE WITNESS: Yeah. That's more of a legal question. I 14 don't know how to answer that. 15 BY ATTORNEY SPERBER: 16 <b>Q Well, I'm asking you in your expert opinion -- 17 you're testifying as an expert that the damages caused by the 18 breaches that you've alleged against JNS caused a certain 19 amount of damages. You should be able to break it down 20 between the damages caused by JNS and the separate breach of 21 Kitchen Winners. Can you?</b> 22 ATTORNEY RAKHUNOV: Objection. Beyond the scope. 23 ATTORNEY FIRSCH: No, it's not. It's precisely the 24 scope. If he can't break this down, he can't testify. 25 THE WITNESS: I would just take -- if you want to do it</p>
<p>Page 54</p> <p>1 <b>Q What are TIs?</b> 2 A Tentative improvements and building buildings, 3 commercial buildings, drug stores, gas stations, building them 4 ground up, doing developments where you do a hundred 3-story 5 townhomes, drugstore, bank, retail center. So I went from 6 construction and TI, tenant improvements, to about 300 -- from 7 just doing some in Michigan to growing to doing them -- about 8 300 of them across 11 states in eight years. 9 Then, I evolved into building -- I evolved into building 10 and owning and being the landlord for those people I was 11 building for. 12 I also started another company called Merchant Hub which 13 is a credit card processing company which is based in the UK 14 which has grown 20 percent, I'd say the last -- a year in the 15 last 15 years, and, you know, sometimes exceeding my 16 expectations. 17 <b>Q For Merchant Hub, had you been -- do you have any 18 written records of your projections of your expectations?</b> 19 A I did -- do. Yeah. 20 <b>Q And for 2024, what are your projections for Merchant 21 Hub?</b> 22 A I didn't review Merchant Hub before I came on this 23 call -- projections. I prepared for this with the documents 24 you provided. 25 <b>Q I'm just trying to understand what your expertise</b></p>	<p>Page 56</p> <p>1 by percentage, take it by what percentage we bought from JNS, 2 from Kitchen Winners, from Adorama. 3 BY ATTORNEY FIRSCH: 4 <b>Q So what percentage of the gloves were purchased from 5 JNS?</b> 6 A I didn't review that part. 7 <b>Q So I would say it's about 10 percent. Is that a 8 reasonable guesstimate?</b> 9 A Sounds reasonable. Sounds -- 10 ATTORNEY RAKHUNOV: Objection. 11 BY ATTORNEY FIRSCH: 12 <b>Q Okay. Let's just take it as an assumption for now. 13 Now, if 10 percent of the gloves had been bad, would Ascension 14 have canceled your contract --</b> 15 ATTORNEY RAKHUNOV: Objection. 16 BY ATTORNEY FIRSCH: 17 <b>Q -- in your expert opinion?</b> 18 A It would probably be more like 15 percent, but -- 19 <b>Q Okay.</b> 20 A -- if -- 21 <b>Q Say, 15 percent --</b> 22 A -- yeah. If I had -- 23 <b>Q If 15 percent of the gloves would have been bad, 24 would Ascension have canceled the relationship?</b> 25 A I --</p>

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<p>Page 57</p> <p>1 ATTORNEY RAKHUNOV: Objection.</p> <p>2 THE WITNESS: -- I believe they would have canceled</p> <p>3 because that would have put a big dent in our relationship</p> <p>4 with them by giving them a product -- and JNS' product in</p> <p>5 particular had stickers on the boxes which they were outraged</p> <p>6 about like we were trying to fool them. So even though it was</p> <p>7 a small portion, I believe that was something that really got</p> <p>8 them fired up.</p> <p>9 BY ATTORNEY FIRSCH:</p> <p>10 <b>Q Okay. What evidence do you have -- because you said</b></p> <p>11 <b>that they were really fired up about it, what evidence do you</b></p> <p>12 <b>have that they were so fired up about it because I haven't</b></p> <p>13 <b>seen anything that they complained about it? I see you</b></p> <p>14 <b>complained about it. I don't see anything that Ascension</b></p> <p>15 <b>complained about it. Tell me -- point to one piece of</b></p> <p>16 <b>evidence that indicates that they complained about that</b></p> <p>17 <b>problem.</b></p> <p>18 A They told us when we -- they had us go examine the</p> <p>19 gloves, and then we went with their nurses. They go, "Why is</p> <p>20 there stickers" -- the nurses in hospital -- "Why is there</p> <p>21 sticker over the gloves?"</p> <p>22 And we had a meeting with the head of nursing, and he</p> <p>23 pulled one of the gloves on. And after that broke immediately</p> <p>24 in his hand, he looked at the front of the box and pulled the</p> <p>25 sticker off and said, "What is this? Why is this on here?"</p>	<p>Page 59</p> <p>1 <b>right? Okay. To me, Adorama and Kitchen Winners are a</b></p> <p>2 <b>grouping. I'm not distinguishing between them.</b></p> <p>3 <b>So you're saying that Adorama and Kitchen Winners did not</b></p> <p>4 <b>breach the -- did not cause any damages?</b></p> <p>5 A I believe that we lost trust with Ascension</p> <p>6 Hospitals delivering Medcare gloves with stickers on them.</p> <p>7 All bad gloves were discovered at the same time. So Kitchen</p> <p>8 Winners', Adorama's, JNS' were all discovered at the same</p> <p>9 time.</p> <p>10 <b>Q So you can't breakdown who damaged you and who</b></p> <p>11 <b>didn't? Is that your testimony? You can only do it by this</b></p> <p>12 <b>group --</b></p> <p>13 A They all did.</p> <p>14 <b>Q What about the attorney in Florida? How much damage</b></p> <p>15 <b>did he cause you that you alleged -- when you alleged that the</b></p> <p>16 <b>attorney in Florida caused them to cancel the contract?</b></p> <p>17 ATTORNEY RAKHUNOV: Objection. Who?</p> <p>18 ATTORNEY FIRSCH: I think it was Hunton and Williams Law</p> <p>19 Firm.</p> <p>20 ATTORNEY RAKHUNOV: Oh.</p> <p>21 BY ATTORNEY FIRSCH:</p> <p>22 <b>Q Didn't you allege in your lawsuit there that they</b></p> <p>23 <b>also caused the exact same damages?</b></p> <p>24 A No.</p> <p>25 <b>Q How much --</b></p>
<p>Page 58</p> <p>1 And I said, "I don't know why it's on there. I don't know</p> <p>2 where it came from."</p> <p>3 <b>Q And at that point you said you didn't know where it</b></p> <p>4 <b>came from, so today do you know --</b></p> <p>5 A I don't know where -- I don't know where the sticker</p> <p>6 came from. I told them at that time. Then after we looked at</p> <p>7 it and we saw the numbers that came in, we saw that those</p> <p>8 boxes came from JNS. They were delivered from JNS.</p> <p>9 <b>Q All right. So now let's move on since -- so you're</b></p> <p>10 <b>saying that they would have canceled the entire contract just</b></p> <p>11 <b>on the basis of your alleged breach by JNS, correct?</b></p> <p>12 A I don't know if they would have canceled the entire</p> <p>13 order, but it would have made us look pretty bad.</p> <p>14 <b>Q Okay. So you're saying you have no damages from</b></p> <p>15 <b>Kitchen Winners because JNS delivered first, and they</b></p> <p>16 <b>breached, so that would have been enough to cancel your whole</b></p> <p>17 <b>relationship? So you have no damages from Kitchen Winners at</b></p> <p>18 <b>all?</b></p> <p>19 ATTORNEY RAKHUNOV: Objection.</p> <p>20 THE WITNESS: I believe we purchased from Adorama, not</p> <p>21 Kitchen Winners. Unless we bought some from Mendel before we</p> <p>22 entered into a contract with Adorama that would be a very</p> <p>23 small amount.</p> <p>24 BY ATTORNEY FIRSCH:</p> <p>25 <b>Q All right. I will just use your name, Adorama,</b></p>	<p>Page 60</p> <p>1 A -- not the same.</p> <p>2 <b>Q -- how much of the damages did they cause?</b></p> <p>3 A I don't agree. No. It's not the same.</p> <p>4 <b>Q Meaning you don't agree, but your attorney, not</b></p> <p>5 <b>Phil, some other attorney on your behalf, pleaded this in a</b></p> <p>6 <b>lawsuit down there, did they not?</b></p> <p>7 A He pleaded -- no. No. No, he didn't.</p> <p>8 <b>Q Just how much did you settle the lawsuit in Florida</b></p> <p>9 <b>for?</b></p> <p>10 ATTORNEY RAKHUNOV: Oh, objection. Hold on there --</p> <p>11 ATTORNEY FIRSCH: It goes directly to damages. It</p> <p>12 relates to the same claims.</p> <p>13 ATTORNEY RAKHUNOV: No. No. No. So, first of all, I</p> <p>14 don't know if there are confidentiality issues there. I am</p> <p>15 not going to let --</p> <p>16 THE WITNESS: There are.</p> <p>17 ATTORNEY RAKHUNOV: Yeah. So I'm not a lawyer in that</p> <p>18 case, but I'm not even going to let Mr. Kato answer that</p> <p>19 question without talking to the lawyer in that case, and --</p> <p>20 and I will just have to put on the record because I -- to the</p> <p>21 extent this comes up later, the damages theory alleged in the</p> <p>22 Hunton case in no way conflicts with the damages theory here.</p> <p>23 I'm not going to --</p> <p>24 ATTORNEY FIRSCH: Phil, we don't need your testimony. It</p> <p>25 is what it is.</p>

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<p style="text-align: right;">Page 61</p> <p>1 ATTORNEY RAKHUNOV: And that's -- yes. So I will just</p> <p>2 leave it at that, but I'm going to instruct Mr. Kato not to --</p> <p>3 until confidentiality issues are sorted out, he should not</p> <p>4 disclose that information.</p> <p>5 ATTORNEY FIRSCH: All right. Maybe we can -- maybe we</p> <p>6 can leave a gap in the record, and you can find out if it is</p> <p>7 confidential, and he could fill it in when -- if it is, in</p> <p>8 fact, not confidential.</p> <p>9 ATTORNEY SPERBER: I do note we do have a confidentiality</p> <p>10 order in place, I believe, in this lawsuit.</p> <p>11 ATTORNEY RAKHUNOV: And it's not my place to, you know,</p> <p>12 invade other cases or to -- you know, without having</p> <p>13 consultation with the other lawyers --</p> <p>14 ATTORNEY SPERBER: I will also note that Mr. Kato is</p> <p>15 under a legal obligation to answer these questions and that</p> <p>16 generally confidentiality provisions do have an exception for</p> <p>17 that situation.</p> <p>18 (Simultaneous colloquy.)</p> <p>19 THE WITNESS: No. They told me when I had it, I'm not</p> <p>20 allowed to answer -- talk about it.</p> <p>21 ATTORNEY RAKHUNOV: And --</p> <p>22 THE WITNESS: That was part of the settlement and --</p> <p>23 ATTORNEY RAKHUNOV: Thomas. Thomas, hold on.</p> <p>24 I also note that there are typically provisions that you</p> <p>25 have to give notice to the other party and give them an</p>	<p style="text-align: right;">Page 63</p> <p>1 <b>in the future, did you have a price on those at that point?</b></p> <p>2 A We didn't get into the price -- let's see. Did we</p> <p>3 talk about price?</p> <p>4 ATTORNEY RAKHUNOV: What's the timeframe? I'm sorry. I</p> <p>5 didn't hear. When are you asking about?</p> <p>6 ATTORNEY FIRSCH: I'm talking about the Intco contract</p> <p>7 that he referenced earlier today.</p> <p>8 THE WITNESS: For 2023?</p> <p>9 ATTORNEY FIRSCH: Yes, the gloves that he was going to</p> <p>10 sell into the future.</p> <p>11 BY ATTORNEY FIRSCH:</p> <p>12 <b>Q Did you have a price -- a purchase price that you</b></p> <p>13 <b>were going to pay to buy those gloves?</b></p> <p>14 A No. We were just going to work on our profit margin</p> <p>15 around 40 percent.</p> <p>16 <b>Q So you were going to ask for a 40 percent profit</b></p> <p>17 <b>margin?</b></p> <p>18 A 30 to 40 percent.</p> <p>19 <b>Q Okay. Now, did you ever discuss that with</b></p> <p>20 <b>Ascension, that margin?</b></p> <p>21 A They don't ask me what our margins are.</p> <p>22 <b>Q Did you ever discuss a price to sell to Ascension</b></p> <p>23 <b>at?</b></p> <p>24 A We discussed that we can be competitive at the time.</p> <p>25 <b>Q Okay. Now, isn't it correct that if your margin is</b></p>
<p style="text-align: right;">Page 62</p> <p>1 opportunity to object to disclosure.</p> <p>2 So, again, I'm not suggesting you never get that</p> <p>3 information, but certainly not prepared to go there now so we</p> <p>4 can follow up, but we can look into it, but I --</p> <p>5 ATTORNEY FIRSCH: All right. I don't want to spend any</p> <p>6 more time on it.</p> <p>7 ATTORNEY RAKHUNOV: Yeah.</p> <p>8 ATTORNEY FIRSCH: You made your position clear. Let's</p> <p>9 move it along.</p> <p>10 BY ATTORNEY FIRSCH:</p> <p>11 <b>Q I'm just trying to break it down. There's multiple</b></p> <p>12 <b>parties who have alleged to have caused you damages and the</b></p> <p>13 <b>damages seem to be all the same pot. Is that accurate?</b></p> <p>14 A Yeah. All the damaged gloves came in at one time.</p> <p>15 They were recognized -- not came in at one time. They were</p> <p>16 recognized at one time.</p> <p>17 <b>Q Now, you talked about that you were going to sell</b></p> <p>18 <b>them Intco gloves, correct, in the future? That was your</b></p> <p>19 <b>intention.</b></p> <p>20 A We sold them Intco gloves in the past, and we were</p> <p>21 talking about making a custom Medcare glove which we were</p> <p>22 going to make whichever way they liked it to look and feel --</p> <p>23 <b>Q Okay.</b></p> <p>24 A -- for them.</p> <p>25 <b>Q So the gloves that you were planning on selling them</b></p>	<p style="text-align: right;">Page 64</p> <p>1 <b>based on a percentage in dollar terms it goes down when the</b></p> <p>2 <b>price of the underlying item goes down?</b></p> <p>3 A Supply and demand of the underlying item goes up and</p> <p>4 down also so -- yes.</p> <p>5 <b>Q But the prices of gloves are substantially down from</b></p> <p>6 <b>what they were in 2021 --</b></p> <p>7 A And --</p> <p>8 <b>Q -- correct?</b></p> <p>9 A -- and the cost of purchasing nitrile to make the</p> <p>10 gloves and materials are essentially down also, so everything</p> <p>11 balances back out. The profit margins --</p> <p>12 <b>Q A 30 percent margin -- if you pay \$10 a box, a 30</b></p> <p>13 <b>percent margin is equal to how much?</b></p> <p>14 A Rock Fintek doesn't have the overhead the --</p> <p>15 <b>Q Answer my question.</b></p> <p>16 A Yes. We will make 30 to 40 percent profit.</p> <p>17 <b>Q Okay. Now, if you sell -- so if you buy a box for</b></p> <p>18 <b>\$10 and make a 30 percent profit, how much money do you make?</b></p> <p>19 A Say that again.</p> <p>20 <b>Q If you buy a box for \$10, and you make a 30 percent</b></p> <p>21 <b>margin reselling it, how much money did you make?</b></p> <p>22 A \$3.</p> <p>23 <b>Q If you buy a box for \$1 and make a 30 percent margin</b></p> <p>24 <b>when you resell it, how much money have you made?</b></p> <p>25 A \$.30.</p>

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<p>Page 65</p> <p>1 <b>Q Correct. So when you were reselling at a regular</b></p> <p>2 <b>price, your 30 to 40 percent margin would result in lower</b></p> <p>3 <b>profits even if you had the same margin, would it not?</b></p> <p>4 A Correct.</p> <p>5 <b>Q Okay. So you can't just copy over what your -- what</b></p> <p>6 <b>your profits were from prior years into the future. You have</b></p> <p>7 <b>to calculate it based on actual numbers, don't you?</b></p> <p>8 A If we went off actual numbers and all the products</p> <p>9 that we stopped selling in 2021, I believe we would have sold</p> <p>10 a lot more masks in 2021 also, and I believe in 2022, they</p> <p>11 would have had us for masks and the gloves the same quantities</p> <p>12 at least. Maybe the masks would have been significantly more</p> <p>13 also.</p> <p>14 <b>Q Now --</b></p> <p>15 A So the volume would have been more, and then the</p> <p>16 profit would have been around the same.</p> <p>17 <b>Q Okay.</b></p> <p>18 A We had built a name and -- with Ascension Health.</p> <p>19 <b>Q In terms of -- just so I can understand this, right,</b></p> <p>20 <b>in terms of selling other products, isn't it true that</b></p> <p>21 <b>Ascension did not buy a single other product from you after</b></p> <p>22 <b>December 2020 even long before they discovered issues with the</b></p> <p>23 <b>Medcare gloves?</b></p> <p>24 A No.</p> <p>25 ATTORNEY RAKHUNOV: Objection.</p>	<p>Page 67</p> <p>1 the same places in China -- similar places in China, our</p> <p>2 operational costs are less, so we would be -- we would be able</p> <p>3 to beat them.</p> <p>4 <b>Q Didn't Mike Elstro testify that you would have</b></p> <p>5 <b>needed FDA approval and --</b></p> <p>6 A We --</p> <p>7 <b>Q -- you didn't have it?</b></p> <p>8 A We had multiple FDA attorneys on retainer that we</p> <p>9 were already working with.</p> <p>10 <b>Q And didn't he suggest that beating out Medline on</b></p> <p>11 <b>price would be a very hard task?</b></p> <p>12 ATTORNEY RAKHUNOV: Objection.</p> <p>13 THE WITNESS: I don't remember if he did or didn't. If</p> <p>14 he did, he did. If he didn't, he didn't. Dewayne Rader told</p> <p>15 us -- took us behind the desk. He said, "Look at this. You</p> <p>16 can do it." Mike Elstro also was ordering a lot of stuff from</p> <p>17 us. Vince Scott was ordering a lot of things from us.</p> <p>18 Everybody was constantly ordering products.</p> <p>19 BY ATTORNEY FIRSCH:</p> <p>20 <b>Q Can you -- let me see how to do this.</b></p> <p>21 A Oh -- and we had FDA approval under the company Rock</p> <p>22 Fintek. We had a registration number and everything with the</p> <p>23 FDA.</p> <p>24 <b>Q All right. Now, if you could go to page 40 of the</b></p> <p>25 <b>exhibit I just pulled back up, the Mike Elstro deposition.</b></p>
<p>Page 66</p> <p>1 THE WITNESS: No. No. We were -- the order we had and</p> <p>2 were focusing on was filling up the glove order. We were</p> <p>3 talking about other products, but we were -- we were focusing</p> <p>4 on trying to deliver the gloves.</p> <p>5 BY ATTORNEY FIRSCH:</p> <p>6 <b>Q But you had no other orders in that time, correct?</b></p> <p>7 A No, because that's all we were focusing on was the</p> <p>8 gloves. We had issues with it.</p> <p>9 <b>Q You're saying you couldn't fulfill any other orders</b></p> <p>10 <b>at that time?</b></p> <p>11 A We could have, but we wanted to make sure that this</p> <p>12 was done correctly.</p> <p>13 <b>Q So when you --</b></p> <p>14 A We lost the 3-ply contract that we would have had a</p> <p>15 lot of 3-ply masks with them, so we couldn't -- we tried</p> <p>16 talking to them about it, and they didn't want to do it. So</p> <p>17 we had sold 20 million 3-ply masks previously, and they didn't</p> <p>18 want to buy anymore until they saw how the orders came out.</p> <p>19 <b>Q So --</b></p> <p>20 A 20 million during the glove order, so we only sold</p> <p>21 20 million during our glove order with them.</p> <p>22 <b>Q Now, what makes you think that Rock Fintek could</b></p> <p>23 <b>have beaten out Medline bidding for their main glove contract?</b></p> <p>24 A I believe Medline has a lot more overhead than us.</p> <p>25 So since we were leaner and we were buying essentially from</p>	<p>Page 68</p> <p>1 <b>Page 40 at line 17, and he said, "And, two, you're</b></p> <p>2 <b>dealing with when you talk about gloves and PPE and masks,</b></p> <p>3 <b>you're talking about some ginormous companies and</b></p> <p>4 <b>organizations that they would have to get very competitive on</b></p> <p>5 <b>price, so there were a couple of big hurdles there. But if</b></p> <p>6 <b>they were willing to clear those, then we would certainly talk</b></p> <p>7 <b>to them, but they would have look at winning the business."</b></p> <p>8 <b>Does that sound to you like you were assured of winning</b></p> <p>9 <b>the glove bid or that a bid would have been a very challenging</b></p> <p>10 <b>thing to win here?</b></p> <p>11 A No. We cleared every hurdle to get to it. Proven</p> <p>12 ourselves. Delivered on time. Products they couldn't get</p> <p>13 from anybody else. So, no. We -- it would have been an easy</p> <p>14 hurdle to clear.</p> <p>15 <b>Q Now, we've seen in discovery in the case that Rock</b></p> <p>16 <b>Fintek failed to include in its contract -- in fact, it's</b></p> <p>17 <b>included in your pleadings even -- in your complaint, right,</b></p> <p>18 <b>that Rock Fintek failed to ensure that compliance with</b></p> <p>19 <b>ASTM D6319 was included in the contracts for the gloves that</b></p> <p>20 <b>were purchased.</b></p> <p>21 <b>Do you know what share of the damages or the result of</b></p> <p>22 <b>Rock Fintek's failure to ensure that the gloves it was buying</b></p> <p>23 <b>contractually had to meet the standards that Ascension needed?</b></p> <p>24 ATTORNEY RAKHUNOV: Objection. I -- I'm not sure I even</p> <p>25 understand that question, but --</p>



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<p style="text-align: right;">Page 69</p> <p>1 ATTORNEY FIRSCH: Okay, but he should answer it anyway --</p> <p>2 ATTORNEY RAKHUNOV: Well --</p> <p>3 ATTORNEY FIRSCH: -- because I'm sure he does.</p> <p>4 THE WITNESS: I don't understand.</p> <p>5 BY ATTORNEY FIRSCH:</p> <p>6 <b>Q Like I said, you've got all the answers, so let's</b></p> <p>7 <b>take it one step at a time.</b></p> <p>8 <b>Isn't it correct that in your pleadings you acknowledge</b></p> <p>9 <b>in this case that you did not contract to purchase ASTM D3619</b></p> <p>10 <b>certified gloves?</b></p> <p>11 ATTORNEY RAKHUNOV: Objection. And objection -- you know</p> <p>12 what? You are now going well beyond the scope of any of this.</p> <p>13 We are now getting --</p> <p>14 ATTORNEY FIRSCH: Yeah. Yeah, only because he refused to</p> <p>15 answer the question when asked to answer it. This is not</p> <p>16 beyond the scope. This is about the damages calculation, and</p> <p>17 I'm asking him to apportion blame to himself, but he doesn't</p> <p>18 want to apportion any blame to himself. I get that. That</p> <p>19 doesn't mean he doesn't have to answer the question.</p> <p>20 ATTORNEY RAKHUNOV: So putting aside counsel's commentary</p> <p>21 and closing arguments, I am going to object to that question.</p> <p>22 This has nothing to do with Rock Fintek's anticipated business</p> <p>23 from Ascension, and Mr. Kato's certainly not appearing as an</p> <p>24 industry expert on gloves.</p> <p>25 THE WITNESS: Not at all.</p>	<p style="text-align: right;">Page 71</p> <p>1 A I got fraudulent gloves that have no nitrile in them</p> <p>2 that are not examination gloves.</p> <p>3 <b>Q Says you, but -- okay. You mentioned RF granted --</b></p> <p>4 <b>Rock Fintek --</b></p> <p>5 A It doesn't say me. I think you would just ask the</p> <p>6 expert -- the glove expert what we got and what we didn't get.</p> <p>7 <b>Q We already know what we think of the glove expert.</b></p> <p>8 <b>We will -- you're not the glove expert. I'm not asking --</b></p> <p>9 (Simultaneous colloquy.)</p> <p>10 THE WITNESS: No. I'm not. You can ask them. 510(k)</p> <p>11 equals D6319. So ask the glove expert what he believes that</p> <p>12 we got.</p> <p>13 BY ATTORNEY FIRSCH:</p> <p>14 <b>Q Now, you brought up earlier in this deposition that</b></p> <p>15 <b>Ascension -- that you were making Rock Fintek-branded masks</b></p> <p>16 <b>for Ascension. Did Ascension ever request Rock Fintek-branded</b></p> <p>17 <b>masks?</b></p> <p>18 A We told them we can get them. They said they didn't</p> <p>19 really care about which brand they want. I said, "We can make</p> <p>20 custom masks the way you like them. The elastic to be the way</p> <p>21 you want them. So we will make Rock Fintek masks for you that</p> <p>22 are more comfortable and the size appropriate that you want</p> <p>23 because we want to take care of our customer," and we made</p> <p>24 them.</p> <p>25 <b>Q Now, maybe I -- I'm still a little confused on your</b></p>
<p style="text-align: right;">Page 70</p> <p>1 ATTORNEY FIRSCH: You mean -- he's appearing as an expert</p> <p>2 in your damages calculations so I'm asking questions about how</p> <p>3 he calculated the damages.</p> <p>4 THE WITNESS: I'm procuring products.</p> <p>5 BY ATTORNEY FIRSCH:</p> <p>6 <b>Q So, again -- so, even better. When you procured the</b></p> <p>7 <b>products from my client and failed to request they meet the</b></p> <p>8 <b>standard in your purchase order, do you not take any of the</b></p> <p>9 <b>blame that any of the damages stem from your failure to</b></p> <p>10 <b>include the term ASTM D6319 in the purchase order that you</b></p> <p>11 <b>submitted to JNS? That was exactly what I was asking. Thank</b></p> <p>12 <b>you for clarifying.</b></p> <p>13 A They had to meet the standard.</p> <p>14 <b>Q It was not in the purchase order, was it, correct?</b></p> <p>15 A They had to meet a standard. I specifically asked.</p> <p>16 <b>Q You did not specifically ask JNS --</b></p> <p>17 A I specifically --</p> <p>18 <b>Q You never spoke to JNS.</b></p> <p>19 A -- I specifically asked. It was implied and told</p> <p>20 them. I also told them the value of the relationship. I</p> <p>21 said, "This is one of the largest hospital systems in the</p> <p>22 country. We cannot have anything going wrong with this." I</p> <p>23 said that multiple times. I testified to it, and they were</p> <p>24 having nitrile examination 510(k) gloves. Period. So --</p> <p>25 <b>Q Okay. Which is what you got.</b></p>	<p style="text-align: right;">Page 72</p> <p>1 <b>margins here. On the \$37 million glove deal, the 200 million</b></p> <p>2 <b>gloves that are the subject of this action, what was your</b></p> <p>3 <b>margin per box on the resale to Ascension? How much money did</b></p> <p>4 <b>you make per box?</b></p> <p>5 A How much money did -- we were losing money because</p> <p>6 we were selling them -- we were buying some at much higher</p> <p>7 than we were selling them for.</p> <p>8 <b>Q So what --</b></p> <p>9 A We were doing that to keep the relationship. There</p> <p>10 were some -- some gloves we were buying at \$16/\$17 a box.</p> <p>11 <b>Q From whom did you buy them at \$16/\$17 a box?</b></p> <p>12 A We bought from multiple people. I believe the most</p> <p>13 we paid JNS might have been \$15 or \$16.</p> <p>14 <b>Q Okay. So what was the margin on the \$15 box? You</b></p> <p>15 <b>were reselling for \$18.50 a box.</b></p> <p>16 A And we had already lost the funds that we already</p> <p>17 paid for the first order through Skymed.</p> <p>18 <b>Q Okay. But that doesn't have anything to do with</b></p> <p>19 <b>JNS --</b></p> <p>20 A It says -- it has everything to do with -- we are</p> <p>21 buying at a loss. We had to take that number out of what we</p> <p>22 can pay. So now they are no longer paying us \$18.50. We are</p> <p>23 getting much less than that, so we are losing \$2/\$3 every box</p> <p>24 we delivered just to keep the relationship.</p> <p>25 <b>Q Okay. So because of your loss, right? You lost the</b></p>



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<p style="text-align: right;">Page 73</p> <p>1 money which is why we were trying to get into how much of that</p> <p>2 money you recovered from Hunton and Williams, but you don't</p> <p>3 want to tell us -- so when you say you lost money, you only</p> <p>4 lost money because you had previously wired money to some</p> <p>5 crook outside the country, correct?</p> <p>6 A That was one way we lost money. We had other ways</p> <p>7 to secure the gloves. We had other companies to buy them</p> <p>8 from. We believed Adorama, JNS and Kitchen Winners so we went</p> <p>9 ahead and purchased from them instead of other credible</p> <p>10 sources that we had purchased from in the past which we should</p> <p>11 not have done.</p> <p>12 Q All right. So what was your margin -- counting for</p> <p>13 that loss of \$6 million, what was your margin? What was</p> <p>14 your -- what was your price per box at that point?</p> <p>15 A I don't have the exact number, but I believe it was</p> <p>16 dollars less a box -- several dollars less of what were</p> <p>17 paying.</p> <p>18 Q All right. I think that's all.</p> <p>19 A But that had nothing to do with the 150 million</p> <p>20 gloves. That was a different contract, a different price.</p> <p>21 ATTORNEY FIRSCH: I think that's all I have.</p> <p>22 Alex, I don't know if you have anything to follow up.</p> <p>23 ATTORNEY SPERBER: Just give me two minutes.</p> <p>24 ATTORNEY FIRSCH: Let me take one quick look. I made</p> <p>25 some notes on here also.</p>	<p style="text-align: right;">Page 75</p> <p>1</p> <p>2 CERTIFICATE OF WITNESS</p> <p>3</p> <p>4</p> <p>5 I, the undersigned, declare under penalty of perjury that</p> <p>6 I have read the foregoing transcript, and I have made any</p> <p>7 corrections, additions or deletions that I was desirous of</p> <p>8 making; that the foregoing is a true and correct transcript</p> <p>9 of my testimony contained therein.</p> <p>10 EXECUTED THIS ____ day of _____, 2024,</p> <p>11 at _____, _____.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 THOMAS KATO</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 74</p> <p>1 ATTORNEY SPERBER: That's all I have as well.</p> <p>2 ATTORNEY FIRSCH: Yes. Thank you for your time. Best</p> <p>3 wishes for your daughter.</p> <p>4 THE WITNESS: I appreciate that. Thank you.</p> <p>5 (Proceedings concluded at 3:17 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 76</p> <p>1 REPORTER CERTIFICATE</p> <p>2</p> <p>3 I, MONIQUE K. GENTRY, do hereby certify that I am</p> <p>4 a Registered Professional Reporter, California Certified</p> <p>5 Shorthand Reporter, and Notary Public; that previous to the</p> <p>6 commencement of the examination, the deponent was duly sworn</p> <p>7 to testify to the truth.</p> <p>8 I further certify that this deposition was taken in</p> <p>9 shorthand by me at the time and place herein set forth, that</p> <p>10 it was thereafter reduced to typewritten form, and that the</p> <p>11 foregoing constitutes a true and correct transcript.</p> <p>12 I further certify that I am not related to, employed by,</p> <p>13 nor of counsel for any of the parties or attorneys herein, nor</p> <p>14 otherwise interested in the result of the within action.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my hand this</p> <p>16 9th day of February, 2024.</p> <p>17</p> <p>18 </p> <p>19 _____</p> <p>20 Monique K. Gentry, RPR, CSR 12354</p> <p>21</p> <p>22 My commission expires:</p> <p>23 October 23, 2024</p> <p>24</p> <p>25</p>

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<p>1 ERRATA SHEET</p> <p>2 Name of Case: Kitchen Winners, et al., v. Rock Fintek LLC</p> <p>3 Deposition of: Thomas Kato</p> <p>4 Proceeding date: February 1, 2024</p> <p>5 The deponent wishes to make the following changes in the testimony as originally given:</p> <p>6</p> <table border="1"> <thead> <tr> <th>7 PAGE</th> <th>7 LINE</th> <th>7 CHANGE</th> <th>7 REASON</th> </tr> </thead> <tbody> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> </tbody> </table> <p>18 Signature of Deponent: _____</p> <p>19 Subscribed and sworn to before me this ____ day of</p> <p>20 _____, 2024.</p> <p>21 _____</p> <p>22 NOTARY PUBLIC</p> <p>22 Address _____</p> <p>23 _____</p> <p>23 My Commission Expires _____</p> <p>24</p> <p>25</p>	7 PAGE	7 LINE	7 CHANGE	7 REASON	8				9				10				11				12				13				14				15				16				17				<p>Page 77</p>
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